PENNSYLVANIA

Edward J. Fleming, Cochranton.
Minnie E. Lewis, Covington.
Edna D. Scott, Dunbar.
Charles H. Lapsley, Glassport.
Grace S. Albright, Hyndman.
Samuel L. Boyer, Library.
Samuel S. Ulerich, New Florence.
Jenny Paterson, Yukon.

TEXAS

Winnie B. Carroll, Center.

WISCONSIN

Marion L. Lundmark, Balsam Lake.
Christian J. Askov, Cushing.

HOUSE OF REPRESENTATIVES

SATURDAY, *January 5, 1929*

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

We praise Thee, O Father of Mercies, that the mind of a great God is on the affairs of human life. We beseech Thee that Thou wouldst resolve all discords into flawless harmony. Subdue the rebellious wills and lives of men. Life's greatest values shall be realized when self is lost in great devotion to all the people of the country. Be unto all of us, O God, more than a clause in a creed; bless us with a personal relationship that shall assure us that Thou art all-loving and all-wise as well as almighty. Save us from ourselves and do not allow the treasures of our natures to go down. Do Thou separate our sins from us as far as the east is from the west, and thanksgiving and praise be unto Thy holy name forever and ever. Amen.

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Craven, its principal clerk, announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 5022. An act to amend sections 183 and 184 of chapter 6 of title 44 of the United States Code approved June 30, 1926, relative to the printing and distribution of the CONGRESSIONAL RECORD.

The message also announced that the Senate insists upon its amendments to the bill (H. R. 7729) entitled "An act to divest goods, wares, and merchandise manufactured, produced, or mined by convicts or prisoners of their interstate character in certain cases," disagreed to by the House of Representatives, agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. COUZENS, Mr. FESS, and Mr. HAWES to be the conferees on the part of the Senate.

The message also announced that the Senate insists upon its amendments to the bill (H. R. 11469) entitled "An act to authorize appropriations for construction at the United States Military Academy, West Point, N. Y.," disagreed to by the House of Representatives, agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. REED of Pennsylvania, Mr. MCMASTER, and Mr. FLETCHER to be the conferees on the part of the Senate.

The message also announced that the Senate disagrees to the amendments of the House of Representatives to the bill (S. 3581) entitled "An act authorizing the Commissioners of the District of Columbia to settle claims and suits against the District of Columbia," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. CAPPER, Mr. BLAINE, and Mr. KING to be the conferees on the part of the Senate.

SENATE BILLS AND JOINT RESOLUTION REFERRED

Bills and a joint resolution of the Senate of the following titles were taken from the Speaker's table and under the rule referred as follows:

S. 584. An act for the relief of Frederick D. Swank; to the Committee on Claims.

S. 2859. An act for the relief of Francis J. Young; to the Committee on Claims.

S. 4588. An act for the relief of Gustave Hoffman; to the Committee on the Civil Service.

S. 4712. An act to authorize the Secretary of War to grant a right of way to the Southern Pacific Railroad Co. across the Benicia Arsenal Military Reservation, Calif.; to the Committee on Military Affairs.

S. 5022. An act to amend sections 183 and 184 of chapter 6, of title 44, of the United States Code, approved June 30, 1926, relative to the printing and distribution of the CONGRESSIONAL RECORD; to the Committee on Printing.

S. J. Res. 182. Joint resolution for the relief of farmers in the storm and flood stricken areas of southeastern United States; to the Committee on Agriculture.

W. C. ADAMSON

Mr. RAYBURN. Mr. Speaker, I ask unanimous consent to address the House for three minutes.

The SPEAKER. The gentleman from Texas asks unanimous consent to address the House for three minutes. Is there objection?

There was no objection.

Mr. RAYBURN. Mr. Speaker, on the 3d day of January, in the city of New York, the Hon. W. C. Adamson of Georgia, passed away. He had recently been a member of the Customs Court in New York, and formerly, for 20 years, an honored Member of this House.

When I came to Congress, little more than a boy, I took membership on the Interstate and Foreign Commerce Committee, of which Judge Adamson was chairman. He was to me always kind and considerate. Under his leadership, I think the committee reached as high a peak in the estimation of the House and the estimation of the country as it has ever reached.

Of all the great statesmen the great State of Georgia has ever sent to the Congress of the United States, none in my opinion was higher in character, honor, and ability than was Judge Adamson. His remains passed through this city this morning en route to his home in Carrollton, Ga.

He was one of the foremost statesmen of Georgia, one of the most efficient leaders and capable chairmen. He was a great and good man, a statesman of the old school and of the highest honor.

FIRST DEFICIENCY APPROPRIATION BILL

Mr. ANTHONY. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the first deficiency bill, H. R. 15848. And, pending that motion, I would like to ask the gentleman from Tennessee [Mr. BYRNS] if we can agree upon time for general debate.

Mr. BYRNS. I would say that I have two requests on this side, and that we can get through in two and a half hours.

Mr. ANTHONY. It was thought the other day that we would devote this day to general debate. Would not four hours be sufficient for Saturday?

Mr. BYRNS. I will agree as far as I am concerned, and, if necessary, I will relieve the House of some of my remarks.

Mr. ANTHONY. And we will consider the bill under the 5-minute rule after to-day.

The SPEAKER. The gentleman from Kansas moves that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the first deficiency bill, and, pending that, asks unanimous consent that the time for general debate be limited to four hours, one-half to be controlled by himself and one-half by the gentleman from Tennesee [Mr. BYRNS]. Is there objection?

There was no objection.

The motion of Mr. ANTHONY was then agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the state of the Union, with Mr. LEHLBACH in the chair.

The CHAIRMAN. The House is in Committee of the Whole House on the state of the Union for the consideration of the bill, of which the Clerk will read the title.

The Clerk read the title, as follows:

A bill (H. R. 15848) making appropriations to supply urgent deficiencies in certain appropriations for the fiscal year ending June 30, 1929, and prior fiscal years, to provide urgent supplemental appropriations for the fiscal year ending June 30, 1929, and for other purposes.

Mr. ANTHONY. Mr. Chairman, I ask unanimous consent that the first reading of the bill be dispensed with.

The CHAIRMAN. The gentleman from Kansas asks unanimous consent that the first reading of the bill be dispensed with. Is there objection?

There was no objection.

Mr. ANTHONY. Mr. Chairman, this is the first deficiency bill presented at this session. It carries a number of items which are in the nature of emergencies, all amounting to slightly more than $84,000,000, which is $664,000 less than the Budget.

I may say at this time that every one of the bills so far reported this session from the Committee on Appropriations is under the Budget estimates.

Now, there are just two items in this bill which are important enough to mention to the House. One of them is the deficiency for the refund of taxes, and the other is the item for the deficiency in the carriage of the air mail.

In regard to the item of $75,000,000 additional proposed to the appropriation for the current year of $130,000,000 for refunds of taxes, there has been considerable discussion. Your committee has been very careful in its investigation of the situation surrounding the principal refund which is included in this item. We have consulted closely with the joint committee of the House and Senate which considered this proposed refund to the Steel Corporation. It is a refund which would attract but little attention in this House if it were not for the fact that this is one of the largest corporations in the world and that the refund carries a larger amount than is usually appropriated for that purpose, and the further fact that some gentlemen on the other side of the House have seen fit and will see fit to make it the medium of partisan political charges and discussion.

In fact, my friend on the Democratic side of the House, the gentleman from Texas [Mr. GARNER], has already gone so far as to make a speech, and he will probably make another one to-day in which he will try his sprouting wings of leadership and broadcast a great deal of political poison for the gullible voters of the country and some Republicans to swallow, unless they are placed upon their guard.

Your committee, as I have said, has inquired carefully into all the facts and circumstances of this proposed refund to the United States Steel Corporation, and we find absolutely nothing upon which to base the slightest suspicion of fraud or collusion or the violation of any law. These large refunds provided for in this bill have one effect, which has been discussed and which will be discussed to-day. They have in a measure served to materially change the relative expenditures of the Government as compared with the receipts for the current fiscal year, and my friend, Mr. GARNER, the other day, in discussing a probable deficit in the Treasury on the receipts of the current year even went so far as to charge the President of the United States with deliberate fraud and misrepresentation to this House and to the country.

Mr. GARNER of Texas. Mr. Chairman, will the gentleman yield?

Mr. ANTHONY. I would rather yield after I have made my statement.

Mr. GARNER of Texas. I just wanted to correct the statement which the gentleman is making now, which is not correct, and I am sure he does not care to make an incorrect statement.

Mr. ANTHONY. I yield to the gentleman from Texas.

Mr. GARNER of Texas. Nowhere in the RECORD, either in the speech I made the other day or in the speech I made before the gentleman's committee, have I charged the President of the United States with making a misrepresentation to Congress, but I did say that the information furnished the President by the Treasury Department caused him to give misinformation to the Congress as to the surplus.

Mr. ANTHONY. I think the gentleman's language might be construed in that way, but I am glad that he meant it the way he did. What the gentleman did say in effect was that the Treasury officials or the Budget, through the President, had misrepresented the situation to Congress.

Mr. GARNER of Texas. And undoubtedly they did.

Mr. ANTHONY. I ask the House to bear with me for a moment, because I say that the President was absolutely correct in the statement that he made in his message to the House in connection with the presentation of the Budget on December 3. Everybody knows that the Budget is an immense book with thousands of pages. It has to be prepared and sent to the printer at least two weeks before the President sends it to the House, and this great volume contains his speech in regard to it, so that on November 20, when the Budget was sent to the printer containing the President's speech, every word that he said in regard to the financial situation of the Government at that time was absolutely correct. There was a balance on the right side of the ledger to the amount of $37,000,000 on November 20 in the Treasury operations for this year. I consulted with officials of the Budget Department about November 22 in connection with my work in the Committee on Appropriations to find out just what the Treasury conditions were. I was assured that we had that balance at that time on the right side of the ledger, but was told that there were several things that could happen at any time which would put us in the "red." One of them was this proposed large refund to the Steel Corporation and other corporations, which would vastly increase this item of expenditure and might put us on the wrong side of the ledger. Another one was that if pending cases in the courts were decided against the Government it could very easily throw us on the wrong side of the balance in the Treasury. One of these things has happened. The necessity for large refunds to the taxpayers has become apparent, but the President, in making his statement on December 3, was absolutely correct, and on December 5 the Chief of the Bureau of Internal Revenue approved these large refunds to the steel and other corporations, and the apparent balance was turned into a deficit. But what does this situation really amount to when we discuss the probable balance for this fiscal year? It means that no one can tell now what the situation will be on June 30. It is entirely probable that if the income of the Government goes on as it is to-day, if the same measure of prosperity prevails in industry and trade in this country, the receipts of the Treasury will be ample to take care of the expenditures of the Government this year, and we may yet have a balance on the right side of the ledger.

The principal matter involved in this return to the Steel Corporation of $15,000,000 of principal and approximately $11,000,000 of interest, is that of the consolidated return idea. The Steel Corporation is made up of the parent organization and about 195 subsidiaries. If they were compelled to make independent returns, one company would not have the right to balance its losses against the profits of another company. Our Democratic friends criticize the Treasury Department for this payment to the Steel Corporation largely made up as it is on the allowance of the principle of these consolidated returns. I want to say to these critics of the Treasury Department that if instead of criticizing Mr. Mellon and the present administration in the Treasury Department, they would criticize the Secretary of the Treasury who was responsible for the regulation which gave the Steel Corporation and other corporations the right to make consolidated returns of their subsidiaries, they would place the blame on Secretary McAdoo who first promulgated the regulation giving the Steel Corporation and these other corporations the right to make consolidated returns under date of February 4, 1918.

I would like to ask the Clerk to read the paragraphs marked in the document entitled "Regulations No. 41, Relative to the War Excess Profits Tax Imposed by the War Revenue Act Approved October 3, 1917," published by the Government Printing Office in 1918.

The Clerk read as follows:

183. ART. 77. When affiliated corporations must furnish information as to intercorporate relations: For the purpose of the excess-profits tax, every corporation will describe in its return all its intercorporate relationships with other corporations with which it is affiliated and will furnish such information in relation thereto as will enable the Commissioner of Internal Revenue to compute the amount of the tax properly due from each corporation on the basis of an equitable and lawful accounting.

184. For the purpose of this regulation, two or more corporations will be deemed to be affiliated (1) when one such corporation owns directly or controls through closely affiliated interests or by a nominee or nominees all or substantially all of the stock of the other or others, or when substantially all of the stock of two or more corporations is owned by the same individual or partnership, and both or all such corporations are engaged in the same or a closely related business; or (2) when one such corporation (a) buys from or sells to another products or services at prices above or below the current market, thus effecting an artificial distribution of profits, or (b) in any way so arranges its financial relationships with another corporation as to assign to it a disproportionate share of net income or invested capital.

185. ART. 78. When affiliated corporations may be required to make consolidated return: Whenever necessary to more equitably determine the invested capital or taxable income the Commissioner of Internal Revenue may require corporations classed as affiliated under article 77 to furnish a consolidated return of net income and invested capital. Where such consolidated return is required, it may be made by any one or more of such corporations or by all of them acting jointly; but if such affiliated corporations, when requested to file such consolidated return, neglect or refuse to do so, the Commissioner of Internal Revenue may cause an examination of the books of all such corporations to be made and a consolidated statement to be made from such examination. In cases where consolidated returns are accepted the total tax will be computed in the first instance as a unit upon the basis of the consolidated return and will be assessed upon the respective affiliated corporations in such proportions as may be agreed among them. If no such agreement is made, the tax will be assessed upon each such corporation in accordance with the net income and invested capital properly assignable to it.

Mr. ANTHONY. Now, Mr. Chairman, I do not offer the slightest criticism or the slightest imputation of irregularity in the issuance of those regulations, but I do say that if there is to be any criticism of anybody for authorizing the refund of taxes made under that principle—and it is the underlying prin-

ciple in the Steel Trust settlement—the responsibility should be placed upon the people who put into effect those regulations.

Just one observation in regard to the probable effect that the allowance of these refunds will have on our operations this year. If we had followed the advice and recommendation of the gentlemen on the other side of the House who are leading in this criticism, instead of our being $37,000,000 on the wrong side of the ledger to-day we would be $200,000,000 to the bad.

If I remember correctly, when the United States Chamber of Commerce two years ago recommended that we should have a tax revision involving a reduction of $400,000,000, that was tacitly approved by the gentleman from Texas [Mr. GARNER] and the other leaders on that side of the House. In the discussions which followed in the House afterwards the gentleman from Texas and other Democratic leaders offered amendments to the tax bill at that time which would have meant a reduction of taxes of hundreds of millions of dollars more than was made, which represents practically the amount by which we would have been deeper in the hole to-day if we had followed their advice and leadership.

As I stated before, under such examination as our committee was able to make—and we went very carefully into the matter, as completely as was allowed by the time at our disposal—there was not the slightest iota of evidence deduced to indicate that this refund should not be allowed.

Mr. COLE of Iowa. Mr. Chairman, will the gentleman yield?

Mr. ANTHONY. Certainly.

Mr. COLE of Iowa. When were these taxes levied?

Mr. ANTHONY. In 1917.

Mr. COLE of Iowa. During Mr. McAdoo's administration?

Mr. ANTHONY. Yes; during Mr. McAdoo's administration; and the regulations under which the refund is claimed were put into effect in February, 1918.

Mr. COLE of Iowa. In other words, we are now called upon to clear up the record which the gentlemen on the other side represent?

Mr. ANTHONY. Yes; the record made at that time.

Mr. BYRNS. Mr. Chairman, the gentleman from Iowa [Mr. COLE] has just referred to the necessity of clearing up the record which the Democratic administration made. I will say to the gentleman that this particular question involves the payment of millions of dollars, including about $26,000,000 to the company to which the gentleman from Kansas referred, by way of refund of money collected under a Democratic administration and for which no claim was made for refund under a Democratic administration, because that company and many other companies availed themselves of the privileges given them under the law of waiting practically five years before they filed their applications, and they did not file them under the administration which had collected the funds.

Now, it is not my purpose to discuss any of the features of this bill under general debate. I may say that I believe I speak for the Democrats of the Committee on Appropriations when I say there is no particular objection, or any objection so far as I know, to any of the provisions of this bill except that provision which proposes to appropriate $75,000,000 for refund of taxes. The minority opposed this in the subcommittee, opposed it in the full committee, and will oppose it here on the floor of the House.

I have been a member of the subcommittees which have considered the appropriations for the refund of taxes ever since the Government has been refunding income taxes illegally and erroneously collected. Always heretofore I have acquiesced in appropriations made for that purpose, and I have raised no question as to those refunds, but I will say to the gentlemen of the House that while the Committee on Appropriations has made such investigation as was possible in the consideration of these estimates, there has been no real investigation ever made by the Appropriations Committee of these refunds except to ascertain the amounts that will be needed. When I say that I do not say it by way of criticism of the committee, because, as a matter of fact, the Appropriations Committee is not provided with the machinery, with the experts, and with the force to go into a detailed investigation of these various refunds.

The only thing that was possible for the committee to do was to ascertain from those representing the Treasury Department the amount of money that had been allowed and the amount it estimated would be needed before another appropriation bill could be passed. That is all that was done with reference to this particular appropriation, as you gentlemen will see if you will examine the hearings; and that is all that has been done with reference to previous appropriations, as you will clearly see if you will examine the hearings on those different occasions.

As I have said to you, I have always heretofore acquiesced in these estimates for refunds, but we are confronted with a different situation at this time. We have a joint committee, appointed under the law, to receive in advances of payment all settlements which exceed $75,000. That committee is provided with experts costing the Government more than $40,000 every year. Certainly it was expected—whether it is so written in the law or not—when Congress appropriated $40,000 for experts that the joint committee should do something more than merely receive these reports from the Treasury Department. It was certainly expected that the joint committee, especially with reference to these larger claims, would make some investigation so as to enable the Members of the Congress to act intelligently when they came to approve them, as you will approve them when you pass this particular appropriation.

Now, our attention has been called to the fact that the joint committee, after considerable hearings and discussion of one of the claims, to which the gentleman from Kansas has referred, involving something like $26,000,000, expressly failed to give its indorsement and approval of that particular claim, although, as has been stated on the floor of this House and in the hearings, a motion was made in that joint committee to approve it. They failed to approve it; yet you and I, as Members of Congress, are asked by our vote in passing this appropriation to approve it, nothwithstanding the fact that the committee in which that responsibility was vested, and which has been supplied with the experts to make an investigation, refused to approve it. That is one of the reasons why, as a member of the Appropriations Committee, I have refused to give my vote in support of this particular appropriation.

Now, another thing, and I shall conclude, because it is not my purpose to go into any discussion of the merits or demerits of any of these claims or into any detailed or elaborate discussion of the matter. But let me say this: There is something more involved in this than the particular claim to which the gentleman referred, large as that is.

There are other large claims pending before that joint committee, and this involves a policy as to whether or not Members of Congress, despite the fact that they have a joint committee vested with this authority and with this power, are going to approve these claims for large or small amounts that are sent up here without that investigation which should be given them. So far as I am concerned, I think there ought to be some change in the methods which are being followed with reference to the consideration of these tax-refund cases, because if you will read the hearings, consuming only, possibly, an hour or an hour and a half before the Subcommittee on Appropriations, you will find that these claims are practically passed upon by one man. Mr. Bond stated that when they were considered and reported, unless the official making the settlement was in doubt it was passed without further objection, but, of course, if he expressed a doubt it was carried before the board. So here we are in the attitude, I say, of passing these large claims without any investigation upon the part of Congress and which are settled, really, by one man. They call them settlements, but they are really compromises, and you and I know that the Treasury Department is not vested with the authority to compromise a claim which has been found correct by its duly accredited representatives. Of course, they get around that by holding their findings in abeyance. Then they make their settlement, which, of course, they say they believe—and I do not question that—to be in the best interests of the Government, and then they follow the policy of revising the findings so as to accord with the settlements or compromises which they make with these various taxpayers. So, as I say, there ought to be a change made by the legislative committee which has jurisdiction over these matters in order that Congress may have some information. But I repeat that since the joint committee, provided with the machinery for that purpose, refused to take the responsibility of approving this claim, as a Member of the House I refuse to take the responsibility of passing it and voting for it unless it is safeguarded by a proper amendment.

Mr. DEMPSEY. Will the gentleman yield for a question?

Mr. BYRNS. For a brief question; yes.

Mr. DEMPSEY. Is it not a fact that the act appointing the joint committee does not in express terms confer upon that committee any authority to either approve or disapprove, and is it not simply an inferential authority, if one exists?

Mr. BYRNS. That is true.

Mr. DEMPSEY. Second, is it not the fact that this committee did make the investigation which it is authorized to make, and was not that made in the manner that the law provides?

Mr. BYRNS. I assume it was. Of course, I do not know just how full or how thorough the investigation was.

Mr. DEMPSEY. And, lastly, is it not the fact that while the committee did not exceed its authority or exercise a purely inferential authority by approving, it did not disapprove.

Mr. BYRNS. That is true. It failed to take any action, and the whole point I was seeking to make is this. Whether it is written in the law or not, certainly Congress expects that the committee should do something more than merely receive these claims when it appropriates and provides $40,000 to provide experts for the purpose of considering them; and after that investigation, in the face of the fact that a motion was made in the committee to approve the claim, the joint committee refused to take the responsibility of approving or disapproving, and under those circumstances I, as a Member of Congress, knowing nothing about the subject, am not willing by my vote to tax the people of this country with $75,000,000 without further information or some safeguarding amendment.

Mr. DEMPSEY. Will the gentleman yield for a further question? If Congress intended this joint committee to either approve or disapprove or to make a report to the Congress upon the investigation which it was to make, is not Congress the one to criticize and not the joint committee and not those who are compelled to act in accordance with the law as it is enacted instead of with a law not enacted, and according to terms which we think should have been put into the law?

Mr. BYRNS. Well, the gentleman knows there were propositions made at the time to clothe the joint committee with just the authority to which the gentleman refers, but the Treasury Department objected, and the best that could be done was to secure the kind of law that we have upon the subject. I am not criticizing the joint committee. I am simply saying that we, as Members of the House, should not undertake to vote this money in the face of the fact that the joint committee after such investigation as it chose to make, with the aid of the experts provided by Congress, refused or failed to take any action whatsoever on the matter. And when we vote to appropriate this money then we undoubtedly are approving the claims in the face of their action.

Mr. LAGUARDIA. Will the gentleman yield?

Mr. BYRNS. Yes.

Mr. LAGUARDIA. Then we are to understand that the joint committee, as a matter of fact, did take affirmative action in respect of some claims and failed to take action in respect of other claims, is that true?

Mr. BYRNS. No; I do not know that the joint committee has ever taken any action with reference to any claim, but they did fail to take action on this claim, despite the fact a motion was made to approve it; and that, in itself, carries the inference that there was in the minds of the joint committee, composed of Senators and Representatives, some doubt, at least, as to whether the claim was a proper claim to be paid; and under these circumstances I repeat for the third or fourth time I am not willing to vote for this appropriation.

Mr. DEMPSEY. If the joint committee, if the gentleman please, had taken action, it would have been an isolated, single case, exceptional, and assuming an authority not conferred upon them by the law.

Mr. BYRNS. But assuming an authority which I believe that Members of the House believed they ought to and would assume when they voted $40,000 per annum out of the Treasury to give them expert assistance.

Mr. DEMPSEY. But if they wanted it they should have put it in the law and not left it to inference.

Mr. BYRNS. I do not think there can be any doubt about the purpose of the Congress in appropriating the money to which I have referred; otherwise, if we are to follow the idea of the gentleman from New York [Mr. DEMPSEY] they would need no experts. It is an entirely useless committee, unnecessary, and simply involving expense to the Government for nothing.

Mr. DEMPSEY. No; what they want, if the gentleman please, is the eye of publicity upon claims. They have that through the investigation made by the committee. It is given full publicity. Everybody knows what has been done, what the claim is, what its nature is, the reasons for its payment, and the matter is fully aired and given to the public. We have the benefit of that investigation, when the matter comes before us, to enable us and help us to decide correctly in connection with the recommendation of the Treasury.

Mr. BYRNS. Let me ask the gentleman this question: Having the power, as the gentleman suggests, to make a thorough and full investigation of the claims over $75,000 sent forward, having been provided with all the expert machinery that the committee said it needed or wished, after the committee has made an investigation, if the members of that committee who have the same responsibility that the gentleman from New York has and that I have, and a greater responsibility on account of their connection with that committee, after a motion is made to approve a particular claim, fail to approve it after such hearing and investigation, is the gentleman who has made no investigation, who has no information in regard to the matter, except that the Treasury Department has found that so much is due, willing to vote the money out of the Treasury?

Mr. GARNER of Texas and Mr. BACON rose.

Mr. DEMPSEY. Let me answer the gentleman. There was every reason and the best of reasons why the joint committee should not be clothed with the authority which the gentleman says it should have had, and that reason is this: The committee was given the power to investigate, but not given the power to report because of two things; one of them very vital to this House, to its jurisdiction, to its standing and importance in the counsels of the Nation. Shall we share with the Senate the right to originate money bills?

Mr. GARNER of Texas. No; we do not propose to do that.

Mr. DEMPSEY. Oh, yes, you do. The instant you consent that a joint committee made up partly of Members of the Senate shall join in recommendations to this House as to a matter of which the House has sole, original jurisdiction, you are depriving this House of the greatest function, the most valuable function, the function which gives it more power, more prestige, a greater standing in the Government than any other power it exercises.

Another reason for not presenting any report, and the controlling reason, was this: The House knew that the report comes from the Appropriations Committee, of which the gentleman from Tennessee is an ornament, of which he is not only the ranking minority member but a man of such standing and ability that we all pay the greatest heed to his suggestion. The instant you confer upon the joint committee the power which belongs and should belong solely and entirely to the committee of which the gentleman from Tennessee is an ornament, you are taking away from your committee the jurisdiction to which you are entitled, which you should hold and preserve as sacred not only for yourselves but for all who come after throughout the history of this country.

Mr. CRISP. Will the gentleman yield?

Mr. DEMPSEY. I have not the floor, but I have no doubt the gentleman from Tennessee will yield.

Mr. CRISP. I would like to have the gentleman from New York cite me to any provision of the Constitution or any other law giving exclusive jurisdiction to the House of Representatives to originate appropriations.

Mr. DEMPSEY. All money bills must originate in the House.

Mr. CRISP. The gentleman is in error; it is only all revenue bills.

Mr. DEMPSEY. And all tax bills.

Mr. BYRNS. I think it is admitted, and it has been ruled a number of times that only revenue bills are required to originate in the House. It has been the custom from time immemorial for all appropriation bills to originate here.

Now, I am going to conclude, for I am taking up the time of others.

Mr. GARNER of Texas. May I make a suggestion in reply to the gentleman from New York?

Mr. BYRNS. I yield.

Mr. GARNER of Texas. The joint committee created by Congress to examine these returns has its agents and employees to make an investigation. The employees of the committee have criticized and have declined to approve this settlement paid by the Treasury Department. When we were having the hearings on the steel corporation report the Assistant Secretary of the Treasury stated that if they disapproved of this he would not pay it, although there was no law compelling him to do it. They recognized that it had some jurisdiction and had some power, whether the gentleman from New York does or not. As to the functions of this committee, he may be of the same opinion as was the gentleman from Indiana during some hearing when he said it was not worth a damn. [Laughter.]

Mr. DEMPSEY. The gentleman has made two statements. He says the Secretary of the Treasury, interpreting this statute, said that if they disapproved it he would not pay it. That is not in point here, because again and again it has been stated that the committee neither approved nor disapproved. So we are not in the position to which the gentleman refers. What he says has no pertinency, no relevancy, no bearing at all on the issue.

Now, the gentleman from Texas states the most surprising thing to me, that some employee of this committee said something. What difference does that make? This is the first time in the discussion of matters on the floor, I will venture, that

any gentleman has ever accredited an employee not designated, not named, as having made a statement which should have any weight or influence in Congress in determining what its action should be.

Mr. BYRNS. Now, in closing let me say this: My good and very able friend from New York, for whom I have a great regard, personally and officially, has wholly failed to answer the question I asked a while ago. I am not going to press him for an answer, but, assuming that he is correct with reference to the joint committee, I simply want to say that if he votes for the $75,000,000 for the refund of taxes in this bill he is voting to approve the finding on the part of the Treasury that the Members of the House of Representatives on that joint committee failed to approve or disapprove.

They have money enough to run until February. What harm can there be in cutting this appropriation out of this bill and taking it up in the general deficiency appropriation bill in February, so as to enable that joint committee to function as some of us when we voted these various annual appropriations expected it to function?

Mr. BACON. Mr. Chairman, will the gentleman yield?

Mr. BYRNS. Yes.

Mr. BACON. Was any motion made in the joint committee to disapprove of any of this?

Mr. BYRNS. I do not know. That will be explained later by some gentleman who is going to take the floor. I do not know what was done in the joint committee.

Mr. BACON. As a matter of fact no motion was made to disapprove it.

Mr. BYRNS. I am not a member of the joint committee, and I can not state what they did.

Mr. Chairman, I yield 30 minutes to the gentleman from Mississippi [Mr. COLLIER].

Mr. COLLIER. Mr. Chairman and gentlemen of the committee, I shall address my remarks to that part of the bill under discussion which relates to these tax refunds, and especially to the tax refund to the United States Steel Corporation. I am not going to-day to make any charges of any sinister or ulterior motives on the part of anyone. Notwithstanding the fact that my good friend from Kansas [Mr. ANTHONY], whom we are all so delighted to see back in his seat [applause]; notwithstanding he has injected partisanship into this matter, I shall try to free myself, as I do in tax discussions as differentiated from tariff discussions, from partisanship. Of course, it is an old story that whenever the opposition party gets itself into difficulty, as it has in this instance, it is, according to the opposition, always because of something that happened overnight during the Democratic administration. I heard one of the great statesmen of this country during the last campaign over the radio, speaking for the opposition party, state that the farm problem had not been ever properly depicted. He then went on and described it in all its details, and said that all the trouble had been brought about overnight because of the action of some Democratic official. We are used to that sort of charge; and therefore the charge of the gentleman from Kansas [Mr. ANTHONY] that all the trouble in this case was due to the action of a Democratic Secretary of the Treasury is not surprising.

We are confronted to-day with a concrete question which is technical in its nature. It was impossible for the Joint Committee on Internal Revenue Taxation to go into this matter as it should be done; and for that reason, let me say, in answer to the question of the gentleman from New York [Mr. BACON], there was no motion made to disapprove this settlement, because, after listening to five hours' discussion of a matter that had been going on in the Treasury Department for over 10 years, no member of that committee was able to determine whether the proposed settlement was a correct and proper one or not.

The Joint Committee on Internal Revenue Taxation, as you have already been informed, has lately been engaged in a review of the proposed refund of taxes and interest in the amount of $26,000,000 to the United States Steel Corporation. The revenue act of 1928 imposes upon the Treasury an obligation to submit to the Joint Committee on Internal Revenue Taxation all proposed refunds in excess of $75,000.

There seems to be some confusion in reference to the Joint Committee on Internal Revenue Taxation.

This committee is not a creature of the rules of the House and Senate like standing Senate and House committees, but it is a child of the statute. When the provision authorizing the creation of this committee was adopted it aroused little comment, and few realized the important work this committee would soon be called on to do.

In the minds of the Members of the House for the most part the controlling idea was that the committee might be useful in making suggestions for the simplification of administrative provisions in internal revenue laws. The prevailing thought in the Senate seemed to be that it would be an investigating committee, a kind of grievance committee that would be permanent and would take the place of the various investigating committees that from time to time had been thought necessary to be created by that body. While both the House and Senate were right in their conclusions, yet the work this committee has been doing is on a much larger and more comprehensive scale than few if any of us realized when the committee was created.

The simplification of many administrative provisions in the revenue act of 1928 testifies to the good work of the committee in this regard. This simplification was due in a large measure to the work of the splendid staff of experts employed by the committee, who were ably assisted by many noted political economists who generously gave us their time and labor without any remuneration from the Government.

The United States Steel Corporation tax case is an inheritance of the excess-profits tax. The taxes involved are for the year 1917, and there are still remaining unsettled in the Treasury over 800 cases for that year.

The delay in the settlement of nearly all of these 1917 tax cases, together with a considerably larger number of later cases, is due to the difficulty the Treasury has experienced in the administration of the provisions of the excess-profits tax in computing consolidated returns of corporations.

The crux in the administration of this tax is the determination of the amount of invested capital of the corporation, because the amount of the invested capital is the basis upon which the tax is levied. A certain percentage of profits based upon the amount of capital invested was exempt from taxation. All profits in excess of the exemption were subject to the excess profits tax.

It was comparatively easy to find the amount of capital invested in the case of an individual corporation. The difficulty lay in determining the consolidated invested capital of a parent corporation and its subsidiaries. In some instances the parent corporation would not only have a number of subsidiaries, but the subsidiaries in turn would have their subsidiaries.

The United States Steel Corporation has perhaps more important affiliations than any other corporation in the United States. There was first the parent, the United States Steel Corporation. Then the children, who were 13 in number, including such sturdy youngsters as the Carnegie interests and 12 others of almost equal importance. These 13 children had a numerous progeny consisting of their subsidiaries who were the grandchildren of the parent, the United States Steel Corporation. Nor did it begin to stop there, for these grandchildren had their offspring, and these subsidiaries were the great grandchildren of the parent, the United States Steel Corporation. A strong and lusty family consisting of parent, children, grandchildren, and great grandchildren which made a total of 195 subsidiaries with a combined capitalization of approximately $1,500,000,000.

Instead of making 195 separate tax returns, taking advantage of the revenue law permitting corporations to make a consolidated return, the United States Steel Corporation made one tax return for the entire consolidation.

In determining the method to pursue in finding the amount of consolidated invested capital the Treasury in 1919 adopted a certain regulation, which was continued in force until the Court of Claims, in an opinion rendered in the case of the United Cigar Stores, upset the Treasury regulation.

This new method of computation in the case of many corporations would result in a material difference in the amount of the consolidated invested capital of the corporation. Almost immediately upon the heels of the decision by the Court of Claims in the United Cigar Stores case, which had upset the Treasury regulation, the Board of Tax Appeals, in the Grand Rapids Dry Goods case, handed down a decision providing for another and a different method of computing the amount of invested capital of a consolidated corporation.

Let us now return to the case of the United States Steel Corporation. The first return made by the corporation was on April 16, 1918, and the final audit was made within the last few weeks. It is regrettable that it has taken over 10 years to arrive at a final settlement in this case and that there are thousands of cases almost as old as this one that are still unsettled in the Treasury.

While the delay in this case appears to be unreasonably long, yet candor and fairness compel the admission that the Treasury was confronted with many unforeseen difficulties in the adjudication of this matter. Not only did the Treasury have to deal with a gigantic corporation making one tax return for 195 subsidiaries, each of which was a huge and complex corporation in itself, but because of divergent court opinion which had

upset its own regulations the Treasury was forced to unexpectedly adopt a new method of computing consolidated invested capital.

Also in a consolidation as large as the United States Steel Corporation a vast amount of clerical work was involved. Assistant Secretary Bond tells us that the documentary evidence alone was so voluminous that it would constitute several truck loads of physical matter, and that the final letter written by the Treasury to the steel corporation consisted of over 2,400 typewritten pages.

I want to be fair in the discussion of this proposed refund, and therefore, knowing the unforeseen difficulties confronting the Treasury in the adjustment of this case, I shall not criticize any official of the Treasury on account of the long delay in its final settlement. I do not charge that there is anything actually wrong or improper about the amount arrived at in the final audit. I do not charge that any sinister or improper motive actuated anyone connected with the Government who was engaged in working on this matter. I can not look into the human heart and see what is written there. I never charge nor do I intimate that a bad motive exists unless I am reasonably sure that it does.

The Treasury officials tell us that this is the best settlement that could have been made. I am unable to say whether the amount arrived at is a just and a fair one, because I do not know. Both Democratic and Republican Treasury officials have been working on this case for over 10 years. I heard less than five hours' discussion of the Government's side of the taxes involved, and it would be folly for me to say that the amount of the refund due the steel corporation is fair or unfair.

Mr. MOORE of Virginia. Mr. Chairman, will the gentleman permit me to interrupt him right there?

Mr. COLLIER. Certainly.

Mr. MOORE of Virginia. At one time did the joint committee or any of its agents have any contact with the Treasury in regard to the settlement of this claim?

Mr. COLLIER. It had; one day and one night.

Mr. MOORE of Virginia. Then the committee was not in cooperation with the Treasury Department in any way in trying to ascertain the amount that should be paid?

Mr. COLLIER. Not at all. Now, in further answer to the gentleman's question in reference to that, the joint committee was notified by our staff of experts. This was a case that they would not even pass upon, because there were such unusual features in the matter, including the unusual method adopted by the Government of finding the consolidated capital in this case.

While I do not charge the Treasury with unnecessary delay in the settlement of this case or that any sinister or improper motive existed, or even that the terms as finally agreed upon between the Government and the Steel Corporation are unjust or unfair, yet I do protest against the methods employed by the Treasury Department in the final adjustment of this matter. I make this protest against the unusual methods employed by the Treasury in arriving at the consolidated invested capital of the Steel Corporation, even if the computation is correct and is for the best interests of the Government in dollars and cents, because I believe that the methods pursued, after over 10 years of consideration, are unjust and unfair both to the Government and the taxpayers of the United States.

I am willing to admit that in arriving at the method of determining the amount of consolidated capital in this case, the Treasury found itself, through, perhaps no fault of its own, in a perplexing dilemma. Its own regulations had been overruled by the decision of the Court of Claims in the United Cigar Stores case, and in the Grand Rapids Dry Goods case, the Board of Tax Appeals had set up a still different method of computing the amount of invested capital. These different methods were antagonistic and only one of them could be right.

It was important to the Government and it was important to the taxpayers of the United States to know which one of these three different methods was the proper one to pursue in the settlement not only of the Steel Corporation case but of the thousands of cases still pending in the department in which the same principle was involved.

In the dilemma in which the Treasury found itself, confronted by three different and antagonistic methods of determining the crux of the excess-profits tax, the consolidated invested capital of the corporation, what did the Treasury do?

Its own regulations had been overruled by a court of competent jurisdiction which set up a different method, which in turn had been overruled by the decision of a tribunal created by Congress to specifically pass upon just such questions. In this apparent impasse, what did the Treasury do? Which one of the methods did it pursue in arriving at the present settlement? How did the Treasury find the amount of consolidated invested capital of a corporation whose capitalization was estimated at approximately $1,500,000,000 and in which there was a dispute in the estimated amount of taxes of over $100,000,000?

Did the Treasury follow its own regulations in defiance of the decision of the Court of Claims and the opinion of the Board of Tax Appeals? No. Did the Treasury then ignore the opinion of the Court of Claims and adopt the rule laid down by the Board of Tax Appeals? No. Did the Treasury then reject the opinion of the Board of Tax Appeals and follow the decision of the Court of Claims? No. What then did the Treasury do?

Mr. WHITTINGTON. Will the gentleman yield?

Mr. COLLIER. I will.

Mr. WHITTINGTON. Is there any appeal from these decisions on the part of the Government so that the Supreme Court of the United States would finally pass upon the method of computation?

Mr. COLLIER. That is what I am coming to, and that is the milk in the coconut. What did the Treasury do?

The Treasury ignored its own regulation, disregarded the decision of the Court of Claims, rejected the opinion of the Board of Tax Appeals, and after over 10 years' consideration of perhaps the most important case before the department ventured upon an unknown and uncharted sea of administrative procedure. Instead of going to the highest authority to find out which one of the three methods of computing the consolidated invested capital of a corporation was the proper one, the Treasury tried something new and unusual. The Treasury officials called into consultation the officials of the Steel Corporation.

At this consultation all the evidence and documents in the case were laid upon a bargain table. It was a case of give and take. They haggled and bargained, and bartered and traded, and receded and conceded until the tax paid by the United States Steel Corporation in 1921 had been reduced in an amount exceeding $44,000,000, together with interest amounting to $11,000,000 additional.

If the unusual methods of arriving at the consolidated invested capital of the Steel Corporation could be used as precedent in the settlement of those cases now pending in the department, as unwise and as unscientific as these methods were, they might be excused upon the idea that a fixed and definite rule of administrative procedure had been established.

But the Government of the United States is denied the privilege of even that trifling compensatory benefit, for both the Treasury and the steel corporation have expressly stipulated that neither the one nor the other would be bound by any of the methods employed in this settlement in the adjustment of any other case now pending.

It is unjust and unfair to the Government and it is unjust and unfair to the taxpayers of the United States that a settlement of this character—one that has not only been pending for over a decade but involves hundreds of millions of dollars—it is unjust and unfair, both to the Government and the taxpayers, that a final settlement should be made without the Government's adopting a fixed rule of administrative procedure. This could have been accomplished by securing from the Supreme Court, the highest court in the land, a definite, fixed method of procedure, which in the future could be used as a precedent by which pending claims could be settled.

Secretary Bond tells us it would take too long, and require too much time to take this case to the United States Supreme Court. Oh, yes; it probably would now, but the United Cigar Stores case was already in the Supreme Court. It was there awaiting a decision from that court of last resort, as to whether the Treasury regulation or the decision of the Court of Claims were correct.

A decision in that case would have settled the principle and there would then have been no need for an opinion by the Board of Tax Appeals, for the highest court in the land would have spoken.

This case was before the Supreme Court and ready for trial, but it was dismissed by the Solicitor General of the United States. Did the Solicitor General make the motion of dismissal on his own initiative? No; it was made, according to the testimony of the Treasury officials, only after he had conferred with the General Counsel of the Internal Revenue Bureau. Had the General Counsel of the Bureau of Internal Revenue permitted this case to be decided by the United States Supreme Court all doubt and uncertainty would have been at an end. Had the highest judicial tribunal in the land spoken, and placed the seal of its approval upon either the Treasury regulation or the decision of the Court of Claims, a precedent would then have been established by which the thousands of unfinished cases now in the Treasury could have been quickly brought to a speedy settlement.

But instead of this, after more than 10 years' discussion and adjustment and readjustment costing the Government thousands of dollars, a useless, conglomerated, heterogeneous arrangement was entered into by the Government and the Steel Corporation, and using the exact language of Secretary Bond, "as a result of concessions and offsetting" the original tax of $217,577,594.22 as audited by the Treasury and was paid into the Treasury by the Steel Corporation was reduced to $173,377,731.42 in the final audit of a short time ago, a reduction of over $44,000,000 together with interest amounting to $11,000,000.

The different audits of this tax made by the Treasury officials at separate intervals are interesting. There were three different audits under the Wilson administration before final settlement was made. There were then five different audits made during the Coolidge administration. I have prepared a table showing these different audits, and ask permission to insert this table in the RECORD.

I do not do this because I wish to reflect upon the honesty or integrity of anyone connected with the Treasury. This comparison is not for the purpose of intimating that any improper or sinister motive existed. I am not denouncing anybody's motives, but I am denouncing the methods of computation used in the case, and I am presenting this table as an indication of what we may expect when a haphazard, conglomerated method of computing consolidated invested capital is attempted. When all the documents are laid upon a bargain table and the haggling, bartering, trading, offsetting, and conceding begin, some one is going to get the worst of it. The shrewdest trader will always win. I do not believe that matters of such importance to both the Government and the taxpayers should be settled in any such uncertain and haphazard way.

Now I am going to try to explain this table. I do not have a blackboard here, but I wish I had. I will consider this table here all that happened in the Wilson administration and this table here all that happened during the Coolidge administration—not during the Harding administration, because this Steel Corporation tax case was lying sound asleep for nearly five years.

On April 18, during the Wilson administration, the United States Steel Corporation——

Mr. CRISP. April 18 of what year?

Mr. COLLIER. April 18, 1918. I thank the gentleman.

The United States Steel Corporation filed a return, which everyone would know was incomplete at that time, of $199,850,857.46, showing a return of that much tax which they owed.

On December 29, 1919, they filed an amended return. This is the United States Steel Corporation's own return. They filed an amended return, not an audit of the Government, of $207,041,023.17.

Then, on December 3, 1920, just about one year later, still under the Wilson administration, the audit made by the auditors in the department found the amount to be due was $213,410,520.92.

Then, about two months later, February 14, 1921, they made another audit in the Treasury Department and they found the amount of the tax to be $213,577,594.22.

Then, in 1921 the final audit was made of $217,577,594.22, which amount was paid by the United States Steel Corporation.

Now, my friends, on this side of the table [indicating] are the returns and audits to which I have referred. There are one, two, three, four, five steps, each step in favor of the Government of the United States and each step against the taxpayer, the United States Steel Corporation.

First, in 1918, there was the original return, then a year afterwards about $7,000,000 more, then about a year afterwards $6,000,000 more, then two months afterwards about $200,000 more, and then the final audit in 1921 of $217,577,594.22, which was paid, and we all forgot about the case until about three days after Christmas in 1925, five years afterwards.

Now, I will get on this side of the table. On this side of the table are the audits made during the Coolidge administration. The first audit was made on December 28, 1925, and that audit reduced the amount of the final audit under the Wilson administration from $217,577,594.22 down to $194,896,627.39.

Then about 11 months later, in 1926, on November 24, there was another audit. They reduced the tax then about $35,000, still, however, a step downwards, a step against the Government, and a step in favor of the United States Steel Corporation.

Then in December, 1927, there was a big jump downward and they found then that the Steel Corporation only owed $190,350,232.71.

Then in about two months—February 15, 1928—they found that the Steel Corporation only owed $189,197,786.86.

The CHAIRMAN. The time of the gentleman from Mississippi has expired.

Mr. BYRNS. I yield the gentleman five minutes more.

Mr. COLLIER. Then came the final audit. It was made several weeks ago and that audit, the final one, was $173,377,731.73.

The increase in favor of the Government from April 18, 1918, to the final audit in 1921, through the different steps, was $17,726,736.76.

The decrease against the Government, not starting in 1921, but starting two days before 1926, as the case slept over five years—the decrease against the Government and in favor of the taxpayer from the 28th of December, 1925, to the final audit, was $44,189,826.49 and interest of $11,000,000.

Gentlemen, I repeat that I am not making this comparison for the purpose of attacking the motives of anyone. I am making this comparison to show that when we lay everything on a bargain table and depart from settled rules of procedure anything may happen and this is what you may expect.

The next case that we place on the bargain table it may be the Treasury officials will be shrewder than the officials of the corporation. I hope so for I do not think our boys had much chance with the officials of the United States Steel Corporation. It has been stated that it was a case of give and take. There is no doubt about that. The Treasury did the giving and the Steel Corporation did the taking. I am not attacking anybody's honesty. I am making this comparison to show you what we may always expect when such unwise and unscientific and unusual methods are pursued.

Mr. GIFFORD. Will the gentleman yield?

Mr. COLLIER. I will be pleased to yield to the gentleman.

Mr. GIFFORD. Since I think the gentleman approves of section 606, since he says the Treasury Department has no ulterior motive and since he absolves the Treasury Department in general, I wish the gentleman in closing his remarks would ask this House to rise and give three cheers for the income-tax method of raising our revenue.

Mr. COLLIER. My time is exhausted.

Mr. ABERNETHY. Will the gentleman yield?

Mr. COLLIER. I yield if I have any time remaining.

Mr. ABERNETHY. This $75,000,000 that is being contested here, does not that include a number of cases in which there is no dispute?

Mr. COLLIER. The gentleman's question brings a new thought to my mind, which I hope the gentleman from Tennessee will give me time to answer.

Mr. BYRNS. I yield to the gentleman two minutes more.

Mr. COLLIER. I will say that this is only about one-third of the refunds in the bill. This refund amounts to $15,000,000 and interest of $11,000,000. I want to say that the Treasury should be criticized for permitting this matter to go along for that length of time, where we are going to lose $11,000,000 in interest. That is not a good business proposition.

Mr. DEMPSEY. Will the gentleman yield?

Mr. COLLIER. Yes.

Mr. DEMPSEY. The gentleman, I understand, has suggested that the time should be postponed for the settlement and the interest is running at 6 per cent.

Mr. COLLIER. The gentleman misunderstood me. I was not talking about a postponement, I am talking about the Treasury settling this matter in such a hodge-podge way, and discarding all business principles of procedure. I am not willing as a Member of the House to approve any such settlement made in such a haphazard way.

Mr. DEMPSEY. The gentleman states that in five hours he was fully unable to absorb that which had taken 10 years——

Mr. COLLIER. Oh, the gentleman misunderstood me; I did not know whether it was good or bad.

Mr. WHITTINGTON. What reason was assigned for dismissing the Government case in the Supreme Court?

Mr. COLLIER. I never heard any reason. [Applause.] I ask unanimous consent to extend my remarks by inserting certain papers.

There was no objection.

United States Steel Corporation income-tax audits from 1918 to final audit in 1928

WILSON ADMINISTRATION		COOLIDGE ADMINISTRATION	
Final audit, 1921	$217,577,594.22	First audit, Dec. 28, 1925	$194,896,627.39
Feb. 14, 1921	213,577,594.22	Nov. 24, 1926	194,861,124.00
Dec. 3, 1920	213,410,520.92	Dec. 20, 1927	190,350,232.71
Dec. 29, 1919	207,041,023.17	Feb. 15, 1928	189,197,786.86
First audit, Apr. 18, 1918	199,850,857.46	Final audit	173,377,731.73
Increase in Wilson administration in favor of Government from from Apr. 18, 1918, to final audit, in 1921, $17,726,736.76.		Decrease in Coolidge administration against Government and in favor of taxpayer from 1921 to final audit in 1928, $44,199,826.49.	

THE THREE DIFFERENT METHODS OF COMPUTING CONSOLIDATED INVESTED CAPITAL

1. The Treasury Regulations:

The regulations (the rule having been in force since 1919) treat the transaction, in accordance with the business or accounting view, as though the parent corporation actually acquired the assets of the subsidiary, rather than the stock, and provide that there should come into consolidated invested capital the value of the tangible and intangible assets of the subsidiary at the time of the transaction, thus subjecting intangible assets of the subsidiary to the 20 per cent limitation.

2. The United Cigar Stores decision:

The Court of Claims, in the case of the United Cigar Stores Co. of America v. United States, held that there should come into consolidated invested capital the value of the stock of the subsidiary at the time acquired by the parent company. The Court of Claims agrees with the regulations in that the valuation should be at the time the stock of the subsidiary is acquired by the parent, but under this decision the limitation upon the intangibles is not applicable and apparently the limitation upon "inadmissibles" (i. e., stock of another corporation) is not applicable. In reaching its decision, the Court of Claims reasoned that since stock, a tangible asset, was acquired, the bureau was not justified in saying that tangible and intangible assets were acquired and then subjecting the intangible assets to the limitation provision prescribed in section 207.

3. The Grand Rapids Dry Goods Co. decision:

The Board of Tax Appeals, in the appeal of Grand Rapids Dry Goods Co. (June 19, 1928), differs with both the bureau and the Court of Claims as to the time the assets of the subsidiary should be valued in computing consolidated invested capital. The board holds that the subsidiary's invested capital should be computed separately under the provisions of section 207. Under this theory the cost of the stock to the parent is disregarded, and it is necessary to go back to the original incorporation of the subsidiary in order to determine the amount of cash paid in for stock, tangible property paid in for stock, intangible property paid in for stock, and its earned surplus and undivided profits accumulated between the time of its original organization and the time of the acquisition of its stock by the parent company. Briefly, the effect of this rule is that all appreciation and depreciation in the value of tangible property from the time it was paid in to the subsidiary to the time the parent acquired the subsidiary's stock, will be disregarded, and the value of the intangibles developed by the subsidiary will be disregarded. Obviously, the subsidiary's invested capital so computed would in the ordinary case be quite different from a computation based on a valuation as of the time the subsidiary's stock is acquired by the parent company. The board would trace the assets of the subsidiary back to its organization, whereas the bureau and the Court of Claims would make the valuation at the time the parent acquired the subsidiary's stock.

Mr. WOOD. Mr. Chairman, I yield 30 minutes to the gentleman from Oregon [Mr. HAWLEY].

Mr. HAWLEY. Mr. Chairman, not long since the gentleman from Texas [Mr. GARNER] in some remarks made on the floor of the House, made several criticisms of the operations of the Treasury Department. Of course the gentleman from Texas is entitled to his opinion and others are entitled to differ from him. I propose to undertake in the short time at my disposal to state the differences I have in mind.

He called the attention of the House to certain refunds in cases of taxes where refunds justly due and payable under the law and to be paid during this fiscal year. As a result, an improper stress was laid on the refund side of the Treasury operations.

He finds that $205,000,000 would be used in refunds, but he did not say that in the same period the Treasury would collect $245,000,000 in deficiencies and back taxes.

For instance, for the fiscal years ending June 30, 1926, 1927, and 1928, refunds in the total sum of $447,918,284 were made. But back taxes and deficiencies were collected to the amount of $980,294,484—the excess of back taxes and deficiencies being $532,000,000.

So the Treasury has been as active in collecting taxes due from those who have not paid the correct amounts as it has in refunding money in settling claims which have been accumulating and came down in a large part from improper administrative methods used by the preceding Democratic administration which clogged the court with cases and which refused to accept the responsibility for their settlement. The Treasury is endeavoring to get rid of these cases because every day they are costing the Government 6 per cent interest until they are finally adjusted and paid.

The Treasury Department has a very difficult task in the settlement of many of these claims, for instance, in the one just cited. That task involves all of the difficult matters of taxation—the 1913 value, invested capital, inventory, depreciation, depletion, and obsolescence, and the Congress of the United States and the Committee on Ways and Means for years have insisted that operations of the Treasury be brought current. The present Treasury officials are endeavoring to do that. In order to determine what the 1913 value means in any case, it is necessary for the Treasury to employ a number of engineers, real estate experts, accountants, and so forth, to find out what was the probable value of a certain plant in 1913, many years ago, eight years at least, in the cases now pending. This was a matter of judgment. The engineers will differ. The Treasury engineers will fix one value, the engineers of the corporation or individual reporting will fix another value, and independent engineers will fix a third value. Which is the correct value? No one can say with mathematical accuracy. Consequently, a conclusion must be reached that is satisfactory to both sides, or the case must be sent to the courts for determination. The courts are manifestly slow in deciding cases, and all the delay that occurs in the courts is costing the United States in interest many millions of dollars. The case of the United States Steel Corporation has been cited, to which I shall refer a little later, but that is not the only large refund pending for settlement. The Supreme Court of the United States last summer decided the case of the National Insurance Co., which involved refunds to the extent of $35,000,000, much larger than the present proposed settlement with interest accrued to date of settlement added.

It is proposed now to defeat the $75,000,000 of deficiency for the payment of refunds. The gentleman from Texas [Mr. GARNER] made an error of $20,000,000 in his statement the other day when he stated there would be $75,000,000 more than the original estimate. The original estimate was $150,000,000 and the present addition is to be $55,000,000, to what was formerly asked, or $205,000,000.

If the proposed increase of $75,000,000 of deficiency appropriations for payment of refunds is defeated, the Steel Co. and the life insurance company will not be affected, because the Steel Co. case is paid to-day and the life insurance companies, I think, have been paid in part, at least; but it will mean that some 50,000 taxpayers having small amounts of refunds due them—and probably needing them—will have to delay until a subsequent deficiency bill is passed, which in all orderly expectation would be at the session of Congress beginning next December. Meanwhile the Government, on all these ascertained deficiencies is paying 6 per cent interest, or $4,500,000 a year on the $75,000,000, or $12,000 a day, and that will be the burden on the revenues for the defeat of this proposed deficiency. And no good purpose would be served unless the Government intends to delay, and then to not finally pay, for sooner or later, if the Government intends to pay, it must pay, and all delay is expensive to the Government. Why, then, not pay promptly and save the Treasury what amount we can in that regard?

Mr. SPROUL of Kansas. Mr. Chairman, will the gentleman yield?

Mr. HAWLEY. Yes.

Mr. SPROUL of Kansas. The House should be interested in knowing whether or not the amount of $75,000,000 or any part of it is really due to be refunded. Their mere conclusion to come to us would not be sufficient information for us to act upon.

Mr. HAWLEY. I will ask the gentleman to be as brief as possible in his question.

Mr. SPROUL of Kansas. The gentleman states that we would be paying 6 per cent interest and that fact should be an inducement to pay, but surely we should not talk about those matters until we are assured that we owe this sum.

Mr. HAWLEY. I take this ground, and very frankly, and I think it is the right one in view of the facts and the certainties of the case. The Treasury Department at first took the view that with the Board of Tax Appeals, which was organized in 1924, we could meet the situations that have arisen. The Board of Tax Appeals has made some progress in reducing the number of cases coming to it. It is an active, diligent board, but many new cases come to it, leaving a considerable accumulation of undecided cases. So, in order to expedite the settlement, they organized an advisory board in the Treasury Department, consisting of 12 of the most expert people, able and experienced men in the department, including all branches of the work, for the purpose of expediting settlements. The experienced men thoroughly familiarize themselves with all the facts in a case, and in greater detail than could be done in an ordinary way, because their facilities are greater. Their decisions are entitled to faith and credit.

These 12 men sit as a court, as it were, to decide the facts in all these large disputed cases. They are as competent men as any ordinary court in the country. Some of them are the most expert tax officials in this or any other country. After long examination, after examining all of the evidence, having employed experts of all kinds to ascertain the facts, they come

to the conclusion that a certain amount of money is due from a taxpayer, or that a certain amount is due to a taxpayer. They report that fact here. A court does not report to us, especially the Supreme Court. It reports a judgment, and the Court of Claims reports a judgment with a brief statement of facts.

Mr. LAGUARDIA. A court matter is a matter of record, and anybody has access to it, but not to the records of the Treasury Department.

Mr. HAWLEY. That is not the fault of the Treasury Department; that is a provision of law.

Mr. LAGUARDIA. The two cases are not analogous.

Mr. HAWLEY. I agree they are not entirely analogous, but I was speaking more to the point of the ability of these men to decide the questions. I believe these men are interested in the welfare of the Government and in securing from the taxpayer all the money that he should pay. In fact, there has been criticism of the officials of the Treasury Department that they were inclined to take the very last dollar from the taxpayer that it was possible to secure from him under any construction of law.

Mr. LOZIER. This controversy involved disputed questions of law and fact. Does not sound public policy suggest that those disputed questions of law and fact be determined by a court?

Mr. HAWLEY. Yes; and I can answer the gentleman's question without his making an argument about it. That is being done now. Where the matter involves mixed questions of law, or mixed questions of law and fact, where the taxpayer believes himself aggrieved, or the Government feels that the taxpayer is not willing to comply with the law written, those cases go to the courts, and those are the ones that should go, but all other matters that are simply matters of judgment, administrative regulation, or decision should be decided in the department administratively.

Mr. LOZIER. Is it not true that the disputed questions of law and fact involved in this case, namely, the amount due, were not submitted to the court, and that the decision of the Treasury Department does not establish a precedent that has the force and finality of a judicial decree?

Mr. HAWLEY. I am interested to know what questions of law arise here, or what mixed questions of law and fact arise. The gentleman from Texas [Mr. GARNER] attacked the Treasury Department on its estimates. That is a favorite subject of attack on the part of the gentleman from Texas. He is always entertaining. I have often wondered why he did not seek a wider amphitheater for the exhibition of his aptitudes along that line. It might be remunerative to the gentleman. [Laughter.]

However, whose estimate shall we follow? Shall we follow that of the gentleman from Texas, who missed it only about $175,000,000 when the revenue act of 1928 was in course of preparation, and including his estimate on the Treasury condition this year he has missed it only $200,000,000? I fear to follow the gentleman from Texas. What did the Treasury do? In the last few years it has made various estimates of income and expenditures. They have varied from the realized amounts to some extent; that is true. I will set out the facts in the case more fully in the extension of my remarks. But there were changes in the law. Also all taxes depend, of course, upon the progress of business; and coupled with that were questions of the sale of securities, questions involving alien property, questions concerning the sale of war materials, and other questions. These increased the difficulties in making estimates of receipts. We have now largely disposed of those nontax and nonrecurring items, and the Treasury this year has on the total estimate missed it by eight-tenths of 1 per cent, and on the income taxes the Treasury missed it four-tenths of 1 per cent, or about $8,000,000.

Now, here is the situation: The gentleman from Texas sets himself up as a judge of estimates. I concede his position on that side of the House. The Treasury estimates are for the country as a whole. The Treasury's estimate was in error about $33,000,000. The gentleman from Texas missed it by $200,000,000.

Mr. GARRETT of Tennessee. Mr. Chairman, will the gentleman yield there?

Mr. HAWLEY. Certainly.

Mr. GARRETT of Tennessee. Did I understand the gentleman to state a few moments ago that his refund to the steel company is being paid to-day?

Mr. HAWLEY. Paid to-day. The law provides that when the Treasury has made a report to the joint committee the joint committee will have 30 days from the date of that notice before the Treasury proceeds to payment, and the Treasury officials advised us that if the settlement was not disturbed they would pay at the expiration of the 30 days, which was midnight last night.

Mr. MOORE of Virginia. Mr. Chairman, will the gentleman yield?

Mr. HAWLEY. Yes.

Mr. MOORE of Virginia. Could the joint committee prevent a payment by protesting?

Mr. HAWLEY. The officials of the Treasury Department, Mr. Alvord and Mr. Bond, both Assistant Secretaries, said, not once, but several times, that if the joint committee did not disturb the settlement they would proceed to the payment and assume the responsibility, but if the joint committee saw fit in any way to disturb the settlement—that is, to take decided action indicating its disapproval—then the joint committee would assume the responsibility. If the joint committee protested against that arrangement, the joint committee would assume the responsibility.

Mr. MOORE of Virginia. Do you mean by "protesting" preventing the payment?

Mr. HAWLEY. If the joint committee had disapproved this settlement and decided that it ought not to be made, it would go to court.

Mr. GARRETT of Tennessee. Then it is using funds out of some other prior allotment to pay that?

Mr. HAWLEY. They are using money for refund purposes authorized in the existing law.

Now, there are many other things that I had in mind to say, but I will confine myself to one other matter. It is admitted by the gentleman——

Mr. GARNER of Texas. Mr. Chairman, will the gentleman yield there?

Mr. HAWLEY. Certainly.

Mr. GARNER of Texas. Do I understand that while Congress is not in session, under your instructions the chief examiner, Mr. Parker, passes on these cases and writes a letter and communicates with the Treasury? Is that correct?

Mr. HAWLEY. He carefully investigates every case, large or small. If he finds no cause to question the finding, he so advises the Treasury. If he finds minor matters, he calls them to the attention of the Treasury. If he finds matters he thinks of importance, he so advises the chairman, and through him the joint committee.

Mr. GARNER of Texas. When Congress is not in session, or even if Congress is in session, he acts for the committee under your direction?

Mr. HAWLEY. Under the directions issued by the former chairman. I am printing in my remarks a statement concerning what Mr. Parker and his staff does.

Mr. GARNER of Texas. Then when the committee is not here he acts for the committee?

Mr. HAWLEY. He acts in this way: He examines all the reports that come to the joint committee. If they are regular in form, and no questions occur as to compitations, or no question of the application of the law or the regulations is involved; or if no other question of law or of fact can be raised, he writes to the Treasury Department to the effect that no suggestions are to be made.

Mr. TREADWAY. Mr. Chairman, will the gentleman yield?

Mr. HAWLEY. Yes.

Mr. TREADWAY. Did not Mr. Parker report to you constantly during the summer?

Mr. HAWLEY. Yes. Small cases he did not report, but on major cases he did.

Mr. TREADWAY. You were in touch with Mr. Parker even when Congress was not in session?

Mr. HAWLEY. Yes.

Now, I desire to make a few remarks on the Steel case. The United States Steel Corporation consists of the parent corporation, 13 subsidiaries and 181 subsidiaries of subsidiaries.

When the Government assessed a tax the policy of the Steel Corporation was to pay it promptly in full, and to raise no question at the time. However, there were many questions which it did raise finally, within the legal period, as to the meaning of the regulations, the interpretation of the law, and the application of the law to certain items. All of those questions were raised in due time, but the steel company took this position: That during the war, when it was necessary for the Government to have money, that whatever money the Government said was due from the steel company it should have; and that after the war was over all questions between the two should be settled, when the Government was not in the stress it was then in; that it desired to have no disputes and no lawsuits with the Government over the question of taxation at that

time. As stated, it paid $217,000,000; and it is asking that under the law and regulations adjustments shall now be made, the proper amount due should be decided and refunds made for the overpayment of its taxes. So far as I know, no allegation of fraud or unlawful practice on the part of the corporation has been raised.

This matter came to the joint committee in due order. I called the joint committee together. Mr. Parker, the expert, reported on it. He had examined it; he had gone into it at some length; he had known it was being considered in the Treasury Department and would come down. He found no fault with the computations nor had he any general criticisms to make of the proposition, but he said it involved certain questions with regard to consolidated returns and invested capital that he did not feel warranted in writing the usual letter without bringing it to the attention of the joint committee. He stated to me that so far as his examination was concerned, he found that at least the amount proposed in the bill is due the Steel Corporation. I called the joint committee together for the purpose of considering the matter. I will not restate what has already been stated regarding the hearings. At the conclusion of the hearings I called the joint committee together in executive session.

The joint committee is not required by law to approve or disapprove a claim. Reports on these claims are sent to us for our information. They can also be obtained by the Committee on Ways and Means, the Committee on Finance of the Senate, and by any special committee appointed for that purpose by either House. After the hearing was concluded, the committee then went into a discussion of what action, if any, the joint committee should take.

The CHAIRMAN. The time of the gentleman from Oregon has again expired.

Mr. WOOD. Mr. Chairman, I yield the gentleman five additional minutes.

Mr. HAWLEY. I take the position that a man who has accepted an appointment or an election to an office is obliged to carry out the responsibilities of that office. He is obliged to do that. Now, certain gentlemen have criticized this settlement, but they had a time, Mr. GARNER, of all times, and an opportunity, of all opportunities, in that joint committee, in executive session, to have made a motion to disapprove this settlement. Did they do it? I violate no confidence of the gentleman from Texas or the joint committee when I say he did not make such a motion, because the gentleman from Texas said somewhat enthusiastically the other day that he did neither of these two things.

Mr. SCHAFER. Will the gentleman yield?

Mr. HAWLEY. Just briefly.

Mr. SCHAFER. If the gentlemen of the joint committee who oppose this refund on the floor to-day had made a motion at the committee meeting to disapprove, and the motion was carried, then that check would not have gone out to the Steel Corporation to-day. Is my understanding correct?

Mr. HAWLEY. If a motion to disapprove had been carried by the joint committee I understand they would not have sent it out but would in all probability have sent it to the Supreme Court.

Mr. SCHAFER. Then, in other words, they are raising a big cry to-day after they have opened the door and let the horse out. [Laughter.]

Mr. HAWLEY. Well, if it is a horse. I want to say for myself, as one member of that joint committee, that I feel it is incumbent upon me to assume the responsibility imposed by my acceptance of that office. The joint committee has done excellent work. The consideration of refunds is but one item in this work. I am quite sure anyone will agree to that who has had occasion to see its work, its services with reference to the tax laws, amendments to the revenue act, and various other activities in which it is engaged.

I have expressed in writing that I did not believe the settlement should be disturbed. I want to know if any man who believes it ought to have been disturbed has expressed that in writing. I believe the Government has gotten a better settlement on this matter than it would get under any other procedure and that if it had gone to the courts it would at least have added many millions of dollars in interest to the present settlement, if the courts affirmed the settlement as agreed on. The interest for five years at 6 per cent on $15,000,000 would be $4,500,000. The expense of 25 experts working on that during that period would mean a considerable additional amount. I believe that this administrative settlement, along lines of sound business, was the best settlement.

Now, they speak here about taking responsibility for the acts of others. We in this House vote for appropriations amounting to more than $3,000,000,000 reported by the distinguished Appropriations Committee.

How many of us investigate the facts in such cases? We have delegated to them the business of making the investigations and reporting to us. [Applause.]

The CHAIRMAN. The time of the gentleman from Oregon has expired.

Mr. HAWLEY. Under the permission to extend and revise my remarks I submit a more extended statement of the matters I discussed and to add some additional information.

The gentleman from Texas [Mr. GARNER] has called the attention of the House to refunds of taxes collected in excess of amounts justly due, particularly emphasizing the total amount to be expended for refunds in this fiscal year. As a result an improper stress has been laid upon one side of the picture only, for he has completely failed to give credit to the Treasury Department for the enormous amounts collected in back taxes in recent years—these amounts being far in excess of the amount of taxes refunded.

He points to the estimated sum of $205,000,000 to be refunded this year. But consider the sum of $245,000,000 which the Treasury estimates will be collected in the same period for back taxes. The Government insists that deficiencies in taxes should be paid and has the power to collect them. It should also as promptly as possible return to taxpayers any excess collected from taxpayers and due them under the law.

In the last three fiscal years refunds and back taxes have been in the following amounts:

Fiscal year ending—	Refunds	Back taxes	Excess of back-tax collections over refunds
June 30, 1926	$182, 220, 051	$295, 982, 056	$113, 762, 005
June 30, 1927	117, 412, 172	331, 476, 826	114, 064, 674
June 30, 1928	148, 286, 061	277, 835, 602	129, 549, 541

In addition to these back taxes—a term which is restricted to collections made after the calendar year has closed—the Treasury every year collects substantial deficiencies before the calendar year closes. These amounts should be added to the figures for back-tax collections, to get a true picture of the results of the Treasury's activities in this respect. Exact figures can not be furnished at this time, but it is conservatively estimated that at least $25,000,000 is obtained annually in this way.

That is, during the last three fiscal years, the Treasury has collected $980,294,484 for deficiencies and back taxes, and refunded on $447,918,284, or an excess of $532,000,000 of deficiencies and back taxes collected over refunds paid. Taxes paid voluntarily in accordance with the returns filed, which in these three years reached the staggering total of over $5,400,000,000, are not included in the above figures. The figures relate only to additional taxes which the Government has claimed and actually collected. This comparison is presented that no false notion may get abroad that the operations of the Treasury consist only in making refunds. It is a large, effective organization for the collecting of taxes, and every year collects in deficiencies and back taxes far more than it has been obliged to refund.

Also the large refunds to which the gentleman has called attention are in part due to decisions of the courts. The decision of the Supreme Court in the case of the National Life Insurance Co., recently decided, will require during this year refunds totaling about $35,000,000. If this amount, together with the $26,000,000 paid to the Steel Corporation, be taken from the estimated total of $205,000,000, we only have left $144,000,000, which is less than the refunds for 1926 or 1928. So that there is nothing startling in the total figure for this year, but they indicate that the Bureau of Internal Revenue is earnestly and successfully dealing with the accumulation of hitherto unsettled cases.

And the gentleman from Texas overlooks another very significant fact; namely, that these refunds are made very largely to correct the errors of the Treasury during years prior to 1921, when the Democratic Party was in power, and these tax laws were being administered by them. Under their administration was inaugurated a system of tax procedure which resulted in virtually driving the whole tax problem into the courts for solution—not for final solution, but for decisions in

thousands of individual cases, year after year, leaving the department with its hands tied during a long period of litigation.

What was the result? The staggering total of 22,000 cases in the Board of Tax Appeals in October, 1927, and several thousand cases in the courts. These cases in the Tax Board involved asserted deficiencies totalling about $700,000,000.

Now all that the Treasury Department has been trying to do is to restore the income tax to its proper sphere. It should not be administered by the courts. Its administration should be kept within the confines of the Treasury except in the exceptional cases that really require litigation. It is substituting decent administrative practices for a scandalous system that was bringing the income tax into disrepute. It is not bargaining, or indulging in any improper practice. It is seeking to administer the income tax in the same sensible way that Canada, Great Britain, and other nations have adopted.

Let me give you a concrete example. You, as a taxpayer, find it necessary to value your factory building for depreciation purposes as of March 1, 1913, as the law permits. You fix a value of $150,000. The department's engineers examine the building and say that it was only worth $140,000. A number of years have elapsed since 1913. What is the correct answer? It is a matter on which any 10 real-estate experts might disagree. Suppose the department, to get rid of this as one of these accumulated cases in the Tax Board, concedes a value of $145,000. Is the result unfair, unsound, unwarranted? Is the answer of a court of last resort apt to be any more correct? Such a court may say the value was $140,000, or $160,000, or any other figure. In any event, the conclusion depends on someone's judgment. The department may gain or lose by the litigation. But the litigation is scarcely worth what it costs. It is also expensive to the taxpayer. He is ready to concede something to get the matter settled. Such a settlement is eminently proper, reasonable, and sound.

Or suppose, in the above case, there is another issue involved, namely, whether a promissory note held by the taxpayer has become worthless within the particular taxable year. The taxpayer has been unable to show to the satisfaction of the Treasury that the note became worthless before the year closed, but it is probable that he could obtain testimony that would show this to be the fact. If the Treasury says "We will concede your value of $150,000 for your building if you will concede this other issue and drop your claim for loss on the note," and the taxpayer willingly assents to get the matter settled, is there anything unreasonable or unsound in using such methods as these to get this accumulation of 22,000 cases out of the way? One item is offset against another. Remember that by these methods the Treasury can make available in the next two or three years large amounts of back taxes which will affect the Government's financial position very favorably, save very considerable sums in interest, and that these amounts will play an important part in determining what the tax rates in the next few years are to be.

In all these criticisms the gentleman from Texas would seem to be on as unsound ground as he was when a year ago he predicted that the tax collections would justify a tax reduction of four hundred millions, a figure that subsequent events have shown to be fantastically high.

Remember that every refund or credit of $75,000 or over is reported to the Joint Congressional Committee on Taxation, and is scrutinized by the expert staff of that committee before a cent is paid out on these claims.

These refund problems are a necessary result of the governmental policy of collecting taxes before litigation. Almost every Government, State and National, has such a policy. Particularly during the war years, when revenue was vitally necessary, we could not stop to wait for court decisions. We had to collect first and let the taxpayer pursue his legal remedies afterwards. Since the 1924 revenue act, we give him the right to a decision of the Board of Tax Appeals before an additional tax can be collected. Now, it is imperative that we dispose of the accumulation of old cases of prior years, making refunds whenever due, collecting deficiencies whenever due, the large problem being to dispose of these old cases forever and not have them dragging their weary and costly way for another five or six years from one court to another.

A failure to pass this supplemental appropriation for refunds for this fiscal year would mean just one thing: That interest would be running against the Government at 6 per cent on this sum of $75,000,000—for we must assume that it is really needed—and would continue to run until Congress at a later date appropriates the money. That would mean $4,500,000 interest annually, or over $12,000 a day, expended needlessly but inevitably. And it will not be just a few large corporations that are deprived of the use of this money. Probably 50,000 taxpayers, large and small, mostly small, would be told by the Treasury that they were entitled to a refund but there was no money available.

Moreover, the refund to the United States Steel Corporation, of which Mr. GARNER spoke, will not be paid out of this supplemental appropriation. Under the agreement of settlement the time limit of 30 days expired on January 4, 1929, at midnight.

ESTIMATES OF RECEIPTS AND DISBURSEMENTS—SURPLUSES

The Federal income tax as we now have it largely arose out of the necessities of the World War. In the case of corporations the invested-capital plan was adopted, under which a certain percentage of tax-free income was allowed before determining the net income subject to taxation. Income, excess-profit taxes, or war taxes were imposed. The rates of taxation were very high and the taxable incomes returned were very large for the years 1917, 1918, 1919, and 1920. The determination of invested capital has proved extremely difficult and has necessitated the employment of engineers of various branches of the engineering business, accountants, lawyers, and other experts. The questions arising out of the problems of invested capital, complicated by consolidated returns, have materially delayed the final adjustment of taxes due for these years. It has been found that, in some instances, an excess of taxes was collected and refunds must be made. In other instances there is a deficiency in the tax and the taxpayer is called upon to make further payments.

The amount of back taxes estimated to be collected in any fiscal year, minus the amount of refunds estimated for that year, has been considered as an item of income for such year and included in the estimates as income. This constitutes an irregular, nonrecurrent item which will in the course of time be reduced to a comparatively small amount. Other nonrecurrent sources of receipts have also existed, such as the sale of surplus war material, sale of railroad securities, sale of Federal farm-loan bonds, and other items. The total amount received from these nonrecurrent sources has been in past years a very material item in the Treasury receipts but is gradually becoming of less importance. These items have complicated the estimates of receipts in past years, as it was not possible to forecast with certainty what settlements of income taxes might be made, deficiencies collected, refunds paid, and what sales of securities or property acquired during the war might be effected. But with the growing elimination of these nonrecurrent items the Treasury has been able to estimate with much certainty the receipts from the sources under its control. There seems to be an opinion in the country that the Treasury Department is primarily responsible for estimates of expenditures, but under the Budget system, as now established, estimates of expenditures are prepared by the Director of the Budget, to whom all the departments and bureaus of the Government report. The Treasury Department prepares the estimates on internal revenue, customs receipts, and miscellaneous receipts. It is true that during the years following the war actual receipts from these sources differed very substantially from the estimates. This was due to the unusual conditions which made it extraordinarily difficult to estimate with great accuracy. For example, extensive changes were made in the revenue laws in 1921, 1924, and 1926, and there were rapid and sweeping changes in business conditions, and miscellaneous receipts were particularly difficult to estimate, owing to the large amount of capital assets held by the Government which were being disposed of but as to which it was impossible to foresee the actual time of disposition. Moreover, the Bureau of Internal Revenue was concentrating on the disposition of the accumulation of tax cases resulting from the war years, which made the back-tax item more uncertain than ever, and even under normal circumstances it is almost impossible to estimate in advance what back-tax collections will amount to, depending as they do on the development of facts which can not be foreseen and on court decisions the effect of which can not be anticipated.

With the passing of the unusual conditions which have existed there is every reason to believe that the Treasury estimates of revenue will become more and more accurate and thus deprive the gentleman from Texas of one of his favorite political targets. For instance, for the fiscal year 1928, the Treasury revenue estimates were remarkably accurate. Total ordinary receipts were estimated at $4,075,600,000, whereas actual receipts amounted to $4,042,300,000, a discrepancy of only $33,000,000, which is extremely small when compared with the total figure and amounts to only eight-tenths of 1 per cent. Income-tax receipts varied from estimates by only four-tenths of 1 per cent. This seems remarkably accurate, especially when consideration is given to the uncertain character of several factors and that the whole structure is based upon the progress of business in the country.

There is every reason to believe that the Treasury estimates for the fiscal year 1929 will prove to be as accurate as they were for the fiscal year 1928.

It seems also that the fiscal year ending June 30, 1929, will close with a surplus in the Treasury.

WHOSE ESTIMATE SHALL WE FOLLOW?

But in the matter of estimates of surpluses, whom shall we follow? Mr. GARNER? I fear to do this. This year when we were preparing the revenue act of 1928 he was quite of the opinion that taxes should be reduced some $400,000,000, as I recall, or some $175,000,000 more than was done. He now laments a possible deficit as a "disgrace to the country." His proposal would have made this certain.

THE PREPARATION OF THE BUDGET

The estimates of receipts and disbursements submitted to the President to be transmitted with the Budget letter are not prepared in the Treasury Department, but are compiled in the Bureau of the Budget. The Treasury therefore is not responsible for the Budget statement nor for the figures which appear in the annual message. While the Bureau of the Budget is nominally "in the Treasury" that does not mean that it is under the direction of the Secretary, but, in practice, means only that the offices of the Bureau of the Budget are in the Treasury Building. The Bureau of the Budget reports directly to the President. On the proposed expenditures by the various departments and offices of government the Treasury reports to the Budget Bureau as any other department reports.

The table of receipts and expenditures printed on pages 18 and 19 of the Report of the Secretary of the Treasury, is not prepared in the Treasury, but by the Bureau of the Budget, and transmitted to the Treasury for inclusion in the Secretary's report. The estimates in the table are on the basis of the information received from the several departments and independent offices by the Bureau of the Budget at the time the Budget letter is prepared for printing.

Surplus revenues accruing in any year have been used to reduce the public debt, and any diminution of the debt lessens, for all subsequent years, the interest charges which must be paid out of the receipts from taxation. Between June 30, 1921, and June 30, 1928, surpluses aggregating $2,791,737,355 have been applied on the debt, making an annual decrease in the interest charge of from $115,000,000 to $120,000,000, and a total of several hundred millions for this period of eight years.

I give below information from the Treasury under date of January 4, 1929, showing details of debt and interest reductions.

THE UNDERSECRETARY OF THE TREASURY,
Washington, January 4, 1929.

Hon. W. C. HAWLEY,
Chairman Committee on Ways and Means,
House of Representatives, Washington, D. C.

DEAR MR. HAWLEY: I acknowledge your letter of January 2, 1929, requesting certain statistics on the public debt of the United States.

The gross public debt of the United States on February 28, 1921, according to the statement of the public debt issued for that date, amounted to $24,049,527,788.58. This is the date nearest to March 4, 1921, for which an official statement was issued showing the status of the public debt.

There is transmitted herewith a statement showing, on the basis of the daily Treasury statements, the public-debt retirements from specified sources for each fiscal year from 1920 to 1928, among which you will find the retirements from surplus.

You request to be advised as to what the annual interest charge on the public debt was for June 30, 1921, and how much such charge has been reduced since that date. While the average annual interest charge on an accrued basis has been computed as shown in Table 52 (pages 541–543) of the Secretary's Annual Report for the fiscal year 1928, it is the Treasury's view that interest payments actually made in cash during a given fiscal year as stated in published reports are the best information for this purpose. The total payments made in the fiscal year 1921 amounted to $999,144,731, and in the fiscal year 1928 amounted to $731,764,476. This shows a total annual reduction in interest payments of $267,380,255. This saving is the result of debt retirements from the sinking fund, foreign repayments, reductions in the general fund balance, and other miscellaneous sources, and of refunding part of the debt into issues bearing lower rates of interest. The average rate of interest on the public debt has been reduced from 4.292 per cent in 1921 to 3.901 per cent in 1928.

You also request to be advised as to how much of this reduction in the interest charge is due to the application of the surpluses. It is not possible to accurately compute this amount, as the surplus of receipts is generally automatically applied throughout the year to debt reduction and there is no necessity for keeping complete accounts of retirements from this source by particular issues. An estimate, however, has been made from the best available information, which indicates that subsequent annual savings in interest charges on account of the application of the surpluses available between June 30, 1921, and June 30, 1928, aggregating $2,791,737,355, will amount to between $115,000,000 and $120,000,000.

I trust this gives you the information you desire.

Sincerely yours,

OGDEN L. MILLS,
Undersecretary of the Treasury.

Statement showing on basis of daily Treasury statements public debt retirements from specific sources for each fiscal year from 1920 to 1928
(War debt reached its peak of $26,596,701,648.01 in the fiscal year 1920, on August 31, 1919)

June 30—	Public debt retirements chargeable against ordinary receipts							Surplus of receipts	Decrease in general fund balance	Total debt reduction	Total gross debt
	Sinking fund	Foreign repayments	Bonds received under the debt settlements	Received for estate taxes in bonds/notes	Franchise tax receipts	Miscellaneous: Gifts, forfeitures, etc.	Total				
1919											$25,484,506,160
1920		$72,669,900		$3,141,050	$2,922,450	$12,950	$78,746,350	$212,475,198	$893,963,145	$1,185,184,693	24,299,321,467
1921	$261,100,250	73,939,300		26,348,950	60,724,500	168,500 4,842,066	422,281,500 4,842,066	86,723,772	[1] 191,976,423	321,870,915	23,977,450,552
1922	276,046,000	64,837,900		21,084,850	60,333,000	392,850	422,694,600	313,801,651	277,572,593	1,014,068,844	22,963,381,708
1923	284,018,800	32,140,000	68,752,950	6,568,550	10,815,300	554,891	402,850,491	309,657,460	[1] 98,833,608	613,674,343	22,349,707,365
1924	295,987,350	38,509,150	110,878,450	8,897,050	3,634,550	93,200	457,999,750	505,366,986	135,527,640	1,098,894,376	21,250,812,989
1925	306,308,400	386,100	158,793,500	47,550	794,160	208,404	466,538,114	250,505,238	17,575,749	734,619,101	20,516,193,888
1926	317,091,750	4,393,500	165,260,000		567,901	62,900	487,376,051	377,767,817	7,833,705	872,977,573	19,643,216,315
1927	333,528,400	19,254,500	159,961,800		1,231,835	5,578,310	519,554,845	635,809,922	[1] 24,055,384	1,131,309,383	18,511,906,932
1928	354,741,300	19,068,000	162,736,050	1,500	618,367	3,089,803	540,255,020	398,828,281	[1] 31,469,570	907,613,731	17,604,293,201
	2,428,822,250	325,198,350	826,382,750	66,089,500	141,642,063	15,003,874	3,803,138,787	3,090,936,325	986,137,847	7,880,212,959	

[1] Increase in net balance in general fund operates as an increase in total gross debt.

Retirements from—			
Charges against ordinary receipts	$3,803,138,787	Total gross debt June 30, 1919	$25,484,506,160
Surplus of receipts	3,090,936,315	Total gross debt June 30, 1928	17,604,293,201
Reduction in general fund balance	986,137,847		7,880,212,959
	7,880,212,959		

NOTE.—The above detailed figures of retirements chargeable against ordinary receipts for the fiscal year 1921 include $4,842,066.45 written off the debt Dec. 31, 1920, on account of fractional currency estimated to have been irrevocably lost or destroyed in circulation.

DEFICIENCIES AND REFUNDS—METHODS OF SETTLEMENT

The collection of taxes is primarily an administrative matter. When questions involving interpretation of the law are raised, or questions of law and fact, or when for any reason the taxpayer feels himself aggrieved, or the Government finds the taxpayer making claims that seem to it unwarranted by the law, these may be taken to the courts. Court proceedings are slow and expensive for various reasons. In order to expedite the settlement of tax cases Congress created the Board of Tax Appeals, to which any taxpayer might appeal before paying a deficiency assessed against him. Decisions of this board and of the Court of Claims, as well as those of other courts, afford precedents for use in subsequent cases. Modern business with its varied and complex conditions is constantly presenting new income-tax problems, which cases theretofore decided by the courts affect but little. I believe it is to the interest both of the

Government and the taxpayer that administrative settlement of tax matters should be the general rule, and this is the policy of the Treasury at this time. In general, the great body of business men in the country are found in actual experience to prefer this method of administrative settlement, as the early disposition of their tax matters affords a very necessary element of certainty in their affairs. A very large proportion of tax returns present simple problems, but there are a great number of returns which involve questions that are by no means easy of determination. What amounts should be allowed in any year arising out of depreciation, depletion, obsolescence, inventories, and so forth, are matters of judgment, to be decided after thorough and careful investigation and the consideration of all the facts in the case.

When cases are referred to the courts it not infrequently happens that before final decision is rendered the taxpayer has gone into bankruptcy, and little or nothing can be collected. The decisions of courts in various jurisdictions are not uniform and are at times contradictory. Some 22,000 cases, involving over $700,000,000, have been referred to the Board of Tax Appeals, which would take the board at least five years to dispose of, not taking into account new cases that may be added. The Board of Tax Appeals is a diligent body and has reduced the above number.

The Board of Tax Appeals, since its organization in July, 1924, received up to June 30, 1927, 28,311 cases, and, during this 3-year period, disposed of 8,893, or 31.52 per cent. There were pending on June 30, 1927, 19,318 cases. On February 29, 1928, the number of cases pending had increased to 21,381, an increase of 2,063 in a period of eight months. During the same 8-months' period the amount of deficiencies involved in pending cases had increased from $517,804,480 to $885,526,232. Delays in the settlement of tax cases should be reduced to the minimum.

In July, 1927, what is known as the Special Advisory Committee was created, consisting of 12 of the best and most experienced men, to administratively consider and settle the more difficult cases. As I understand, the Board of Tax Appeals has been relieved by this committee of a number of cases. During its first year the Special Advisory Committee considered 8,549 cases and disposed of 5,391 by the administrative method. As stated above, the committee has relieved the board of many cases, and has eliminated by settlement several thousand other cases that would have been appealed. Congress has, for some years, been urging the disposition of the accumulated cases, and the Treasury is making a diligent and effective effort to do this. Early settlement eliminates the expenses of litigation, for every day that a case is pending before the courts there is a continued expense. The purpose of the bureau is to give the taxpayer as fair treatment as could be accorded in the court, and at the same time protect the interest of the Government, and, while proper forms of procedure are observed, there is less formality than occurs in the court. The early way out of this wilderness of accumulating cases does not run through the courts.

In a great percentage of income-tax cases, particularly those involving excess-profit and war-profit taxes, and in which invested capital is a factor, it is not possible to determine the tax with strict mathematical accuracy. In these returns there are invariably present items concerning the application of which there is disagreement between the taxpayer and the bureau, such as inventories, depreciation, depletion, obsolescence, and many others which affect the amount of tax to be paid, the deficiency to be collected, or the refund to be made. The determination of such questions rests upon judgment rather than mathematical calculation.

The whole trend in administration in the Bureau of Internal Revenue is to diligently audit revenue returns and close cases, dealing with taxpayers in a courteous and sympathetic manner. With the vast majority of taxpayers the administration of the income tax is growing in approval.

The Treasury has not to my memory indicated any desire to see the income tax abandoned, but, on the contrary, has adopted the administrative method of settlement under the operations of which taxpayers are indicating an increasing satisfaction.

The most certain way to make the revenue tax unacceptable in the country would be for the Government to become litigious and file a multiplicity of suits. It is the purpose to avoid this in all proper cases. Suits involving questions of the interpretation of law, or for the decision of questions of mixed law and fact, or where a taxpayer feels aggrieved and exercises his right to enter a court, or the Treasury believes the interests of the Government can not otherwise be protected will continually occur. But unnecessary suits should be avoided.

And, in passing, let me say that the Secretary of the Treasury does not administer the revenue tax, audit returns, assess deficiencies, or determine refunds. These are committed to the officials who are designated under the law for this service and who work out their problems according to their own program. Deficiencies or refunds as agreed upon are not submitted to the Secretary for his approval; nor does he hasten or delay the adjustment of individual tax cases, as was inferred by Mr. GARNER.

As I understand, the Secretary of the Treasury does not prescribe to the Bureau of Internal Revenue the order in which returns shall be considered which involve the collection of deficiencies or the payment of refunds. The bureau proceeds with its work as rapidly as consistent with accuracy and due consideration. When agreements have been reached with taxpayers upon deficiencies or refunds the deficiencies are collected and the refunds prepared for payment. There is no policy existing in the bureau or in the Treasury under which the decision on cases will be so arranged as to occur at moments that may be said to be politically fortunate. During the consideration of a return in which there are disputed items it can not be forecast with certainty when a conclusion will be agreed upon. There is no reason for holding back the decision on a refund or on a deficiency, and a Committee on Ways and Means has for several years urged the bureau to bring its work current. In accordance with this, as well as with its own desire, cases have been brought to settlement as rapidly as possible.

I have on several occasions differed with the Treasury on tax policies, but as an institution, after many years of experience, and especially during recent years, I have regarded the Treasury proceedings as those which should be pursued by any sound business concern. Any febrile attempt to bring the administration of the present great Secretary of the Treasury into discredit has not been and will not be received by the country as warranted.

UNITED STATES STEEL CORPORATION REFUND

The recent remarks concerning Treasury operations, especially regarding those of the Bureau of Internal Revenue, occurring on the floor of this House, primarily arose out of the settlement with the United States Steel Corporation for taxes for the year 1917. The United States Steel Corporation as a parent concern, is not a manufacturing concern but a holding company. The general organization consisted in 1917 of a total of 195 corporations comprising a parent company, 13 subsidiaries of the parent, and 181 subsidiaries of subsidiaries. With its return of 1917 it paid in round numbers $200,000,000 of tax. Subsequently, upon demands from the Treasury, it paid over $17,000,000 additional tax. The policy of the company was to pay taxes as soon as assessed, and within the legal period to file application for refunds whenever it thought refunds were due. This policy has given the Government the use of the money made in the additional payments for the period of from seven to nine years. Practically all the difficult problems connected with income taxation are involved in this case, including depreciation, depletion, obsolescence, inventories, and so forth, requiring the examination and report of engineers, accountants, lawyers, and other experts. Within the legal period, and in order to preserve its rights, the corporation filed during the past summer a suit in the Court of Claims, in the amount of $101,000,000 principal sum and $60,000,000 interest, or a total of $161,000,000. This suit included, of course, practically every item that has been in dispute during the consideration of this case. Recently, the Bureau of Internal Revenue arrived at a settlement with the company for refunds for 1917, of nearly $16,00,000, with interest of approximately $11,000,000, making a total of a little less than $27,000,000. Involved in this agreement is a final settlement of the taxes of the corporation for the year 1917, and a dismissal of the pending suit in the Court of Claims. In accordance with the law, which requires all settlements for refunds in excess of $75,000 to be reported to the Joint Committee on Internal Revenue Taxation, the bureau so reported on December 17. The case was carefully examined by the division of investigation.

As chairman of the joint committee, I called a meeting at which officials of the Treasury appeared and made a statement to the joint committee of the facts in the case and the considerations that led to the conclusion of this agreement.

Under the revenue act, returns are subject to publicity only to a limited extent, and certain facts regarding returns are not to be made public by any person, no matter what office such person may hold. The law provides that the Committee on Ways and Means of the House, the Committee on Finance of the Senate, and the Joint Committee on Internal Revenue Taxation, can ask the Treasury for certain information for their guidance, but this provision does not set aside that provision of the law which inhibits the publicity of returns. When the joint committee met, the question was raised whether the hear-

ing should be stenographically reported. The Treasury officials were asked if they could speak as freely to the joint committee if the proceedings were to be stenographically reported as they could under the law if no reporter were present, and the officials stated that they would necessarily be restricted in their statements were a reporter present. The committee therefore decided not to have the proceedings stenographically reported, in the interest of the fuller information. The joint committee is not required to approve a refund or to disapprove a refund. Under the law these reports are submitted for the information of the joint committee. However, if the joint committee should seriously object to any settlement involving refunds, doubtless such objections would be given the serious consideration of the Treasury. In fact, the officials stated that if the joint committee entered no objection they would proceed with the settlemen, and when the time arrived, on January 4, for payment, would pay the refund and the Treasury would assume the responsibility for the settlement; but if the joint committee opposed the settlement, and suggested that it should be taken to the court, the responsibility for the outcome must be assumed by the joint committee. At the conclusion of the hearing which lasted some four hours, the joint committee met in executive session. As one of the members, I believe the settlement is favorable to the Government, that it should not be disturbed, and that legal proceedings should be instituted. Litigation would require the attention of a large number of the experts for a period of five years, in all probability, and the payment of a large sum in additional interest, before a final decision by the Supreme Court could be obtained. Mr. GARNER is a member of the joint committee.

I violate no confidence of that committee in stating that he made no motion or made no proposal to disturb the settlement, for he has already made that statement on this floor. I have always held the opinion that a person elected or appointed to office is under obligations to fulfill the duties of the office he has accepted. I submit that if Mr. GARNER were opposed to this settlement he had the opportunity of all opportunities in the joint committee to have made a motion to that effect; but since he did not, by his own act he has tacitly declined to disturb the settlement, leaving the responsibility for such settlement with the Treasury. His speech on the floor of the House may or may not indicate such dissent.

The settlement with the United States Steel Corporation for the years 1918 and 1919 awaits the disposition of that pending for 1917, and in the settlement to be effected for these years the $28,000,000 of credit transferred from 1917 will be taken into the account. If the proposed settlement were to be rejected and the matter litigated, no one can forecast the final outcome; but, in the meantime, interest must be paid by the Government for a period of many years on all refunds ordered by the Supreme Court.

At the hearing it was several times clearly stated by the Treasury officials that the proposed refund would be paid at the end of the statutory period of 30 days; that is, January 4, 1929, if the joint committee did not take unfavorable action. I earnestly suggest that Mr. GARNER neglected his opportunity if he holds the opinion that the proposed settlement should be rejected and the matter submitted to the courts. I have been proceeding on the supposition that this was the discussion of a financial matter in which opportunity was afforded to correct what a member of the joint committee thought was an objectionable action, or at least to express disapprobation in an official way. However, if this is considered as an opening for partisan advantage, that is another story.

The Joint Committee on Internal Revenue Taxation was organized by the election of Hon. William R. Green, then chairman of the Committee on Ways and Means, as chairman. Judge Green was authorized to employ a staff of experts and stenographers. With the experts he worked out plans of work which were approved by the joint committee and which have not yet been fully carried out. When I became chairman, after inquiry, I found it not advisable to disturb or set aside investigations in progress, but have suggested some additional inquiries. There is much valuable work yet to be done by the joint committee and its staff in working out the problems involved in income tax legislation. At my request, Mr. L. H. Parker, Chief of the Bureau of Investigation, prepared a brief statement of the plans and work of the joint committee:

CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON INTERNAL REVENUE TAXATION,
Washington, December 28, 1928.

Hon. WILLIS C. HAWLEY,
Chairman Joint Committee on Internal Revenue Taxation,
Washington, D. C.

MY DEAR CHAIRMAN: In accordance with your verbal request of yesterday, I am outlining briefly the procedure followed by this office in connection with the refunds and credits which have been or are being reported to the Joint Committee on Internal Revenue Taxation under the provisions of H. R. 16462, the urgent deficiency bill of February 28, 1927, and under the provisions of section 710 of the revenue act of 1928. The procedure followed was approved by Hon. William R. Green, former chairman of this committee.

Both the urgent deficiency bill and the revenue act of 1928 required that refunds and credits in excess of $75,000 should be reported to the committee by the Commissioner of Internal Revenue, together with a copy of his decision in each case. No power to approve or disapprove these credits or refunds was vested in the committee. It was recognized, however, that while the committee had no definite responsibility in the matter of the refunds and credits, that nevertheless Congress had a purpose in enacting this legislation and that there was laid on the committee an obligation to carry out such purpose or purposes.

The purposes which it seemed probable that the Congress had in mind were the subject of conferences between the former chairman, Judge Green, and the writer. It was concluded that the intent of Congress could be analyzed substantially as follows:

First. It appeared to be the purpose that the joint committee should be informed as to the principal reasons for the crediting and refunding of taxes, and that the Congress should also be informed of such reasons if it was thought desirable.

Second. It appeared to be the purpose that the joint committee should be furnished currently with the decision of the commissioner on these important cases, thus allowing it to study the effect of our system of internal-revenue taxation in the concrete instead of studying the effect of this system mainly in the abstract.

Third. It appeared to be the purpose that the committee itself, or its authorized agents, should call to the attention of the Bureau of Internal Revenue or the Treasury Department any final tax determinations resulting in refunds or credits which might seem erroneous, or doubtful, or worthy of further study and investigation. It was understood, that as the committee had no power to approve or disapprove of these matters, that the duty of the committee and its staff was discharged with the making of the above comments, and that the department could act on same as it saw fit.

Judge Green instructed the writer to take charge of the reports made by the commissioner in regard to refunds and credits and to handle same in general conformity with the three purposes named above. It was realized that a complete audit of these cases could not be made, and it was therefore left to the discretion of the writer as to what cases would be especially investigated from the complete files of the Bureau of Internal Revenue. The reports made to the committee and the decisions of the commissioner have in all cases been carefully examined. Cases which have seemed doubtful after such examination have been thoroughly investigated on the doubtful points from the bureau files. Your instructions to the writer upon taking up the chairmanship of the committee were to follow the same procedure as instituted and approved by Judge Green.

In carrying out the above instructions the writer has had also two practical considerations in mind—first, to cause as little interference with the work of the bureau as possible and, second, to cause no interest loss to the Government on account of delays.

Mr. Chesteen, assistant chief of this division and a former auditor of the consolidated returns division of the bureau, has immediate charge of all special investigations requiring an examination of the bureau files. He has been furnished, through the kindness of the commissioner, an office in the National Press Building, where the audit division of the bureau is located. Thus files can be examined by him or his assistant without leaving the building. This prevents many disadvantages which would occur if the files left the custody of the bureau for examination at the Capitol.

A few words seem proper as to the results of the above procedure. In carrying out what appeared to be the first purpose of the Congress in regard to ascertaining the principal reasons for the refunds and credits a complete report on refunds, credits, and abatements was made and furnished each member of the joint committee in January, 1928 (report dated December 8, 1927). This report fully outlines and classifies the principal reasons for such overassessments of tax and also contains a description of certain important individual cases and the comments made thereon to the bureau by this office. A duplicate copy of this report is attached. The joint committee took the matter of submitting this report to the Congress under advisement, and action thereon has not been taken. A similar report is now in process of preparation and will be ready for submittal to the joint committee in January, 1929.

The second purpose which seemed to be in the mind of the Congress was in regard to furnishing a basis for the study of our system of internal-revenue taxation in the concrete in order that defects could be found and means of simplification arrived at. The writer believes that the study of these refunds has brought out matters which have had an important bearing on the following reports already made:

1. Depreciation.
2. Capital gains and losses.
3. Consolidated returns.

4. Interest.

5. Federal taxation of life-insurance companies. The necessity for reports on other subjects has also been seen from this study, among which may be mentioned:

6. Credit of foreign taxes.

7. Depletion.

8. Defects which allow of legal tax avoidance.

9. Valuation methods.

The third purpose of the Congress appeared to be that there should be opportunity for comments to be made to the Treasury Department or the Bureau of Internal Revenue by the joint committee or its agents in regard to specific cases. It is the opinion of the writer that in the main the comments of this division have been helpful to the bureau instead of the reverse, as they have called to the attention of the higher officials certain doubtful issues, and, in at least one instance, seem to have corrected an inconsistent practice. The actual cases where the comments of this division have resulted in reducing the refunds proposed have only been two in number and the amounts saved comparatively small in comparison with the enormous amount of refunds made. Nevertheless the corrections made have been in an amount more than sufficient to pay the expenses of this division since its organization.

The writer would be glad to be advised if the above sufficiently describes our procedure in connection with refunds and credits, and, also, if you desire to make any modifications or changes in our present practice.

Very respectfully,

L. H. PARKER.

Mr. WOOD. Mr. Chairman, I yield 15 minutes to the gentleman from Massachusetts [Mr. TREADWAY].

Mr. TREADWAY. Mr. Chairman, I feel the time that has been allotted to me could have been used to very much better advantage in the hands of our distinguished chairman. I can only paint the picture perhaps in a little different language from that which he has already so ably used.

In the first place, I want to go a little more completely into what has brought this matter to the attention of the House at this time. It would appear that the question of refunds in taxation is almost a new subject here. Of course, it has been going on indefinitely since the income tax law was first set up and will continue to go on. The total refunds since 1917 have amounted to $975,012,356.33. This is not a new situation at all, but it so happens that under the regulation which requires all reports of claims exceeding $75,000 to be made to the joint committee for its consideration—not approval or disapproval—attention has been concentrated on this hearing at the present time through the gentleman from Texas and I first want to make a reference to that matter.

The chairman has referred to the meeting of the joint committee held on December 17, at which appearance was made by the Treasury Department. There was present a stenographer, and the first question that came up was whether or not we needed his services. The statement was made that it might be embarrassing at a later period in court if this matter was considered in open session, a report of it made stenographically, and then made a public record. It was therefore agreed by the joint committee that we were in executive session and the stenographer was excused.

I do not ever wish to criticize my colleagues, but I do think the House is entitled to a realization of the fact that within 48 hours from that time the distinguished gentleman from Texas took it upon himself to make an hour's speech on the floor delivering to the general public the details of what had happened in the executive session of the joint committee. It does not seem to me that this was either ethical, proper, or under the general parliamentary procedure of the House.

I was very much surprised that he, of all men, knowing how careful he has been in sessions of the Ways and Means Committee to wonder where leaks to the press came from, that he himself should have taken it upon himself to bring the matter in the form of a speech before the House; but there was no deception on his part as to where the leaks came from in this case. The leak was very apparent and the gentleman from Texas was the party that leaked. [Laughter.]

Now, the gentleman from Mississippi [Mr. COLLIER], another colleague of ours on the joint committee, has taken exception to what he calls a trade-and-barter system of settling these very intricate cases.

It has been referred to several times that this case, the so-called United States Steel Corporation case, is so intricate, so complicated, and so voluminous that it required 2,400 pages of closely typewritten material to even make a report on it. Still the gentleman from Mississippi says that the method of settlement was a hodgepodge. Why, according to the testimony before the Committee on Appropriations of the Undersecretary, Mr. Bond, three of the ablest men in the department had worked for years on this matter.

Mr. COLLIER. Will the gentleman yield?

Mr. TREADWAY. Yes.

Mr. COLLIER. I quoted the language of Secretary Bond himself where he said, "After offsetting and conceding." If that is not a different name for bartering and trading, I do not know what would be. He used perhaps finer language.

Mr. TREADWAY. In order that the matter may properly be before the Members of the House, let me say that I am somewhat of a Yankee trader. I have never had occasion to trade individually in these millions, of course, but the gentleman knows that we have information that the United States Steel Corporation from the very beginning of the income tax law had paid every claim ever made by the Government in the form of taxation, never had questioned or quibbled, and therefore they naturally brought in a protest when the time came. They did pay the tax, and under the best of audits, if this bill had not been paid at midnight last night, as our chairman has told you, the suit in the Court of Claims would have followed on the part of the United States Steel Corporation representing over $100,000,000 of claims against the United States and in addition to the $100,000,000 there would have been a further claim of $60,000,000 for interest. Now, which is better, to allow all the experts available in the Government to make up this tax bill and say what is a fair compromise and have the United States Steel Corporation agree to that compromise of $15,000,000 with $11,000,000 of interest added, making a total of $26,000,000, or go to court over a long period of years with a greatly involved case, and then be called upon possibly to pay $160,000,000. If this is trade and barter, I am for it.

Inquiry has been made as to whether this transaction would close up all pending tax refunds to the United States Steel Corporation. In reply I would say that the tax for the year 1917 is the only one involved in this settlement. The company paid $216,849,230.56, and, as above stated, filed suit in the Court of Claims for the refund of $101,000,000. This suit is cleaned up and settled by the payment by the Government of the $15,000,000, with interest.

Now, in addition to this, we of the Ways and Means Committee and of the joint committee have insisted continually, Clean up these back cases and get current! No man has used the language of bringing the cases up current more than my good friend GARNER, from Texas, who is always urging the Treasury Department to get current, and here was a case where we could make great headway, and when the Treasury Department offers this opportunity he is not willing to help get current.

Our Democratic friends are always criticizing the overhangs of back cases. We have set up different forms and methods endeavoring to get current. First, the Board of Tax Appeals, which has not been able to make any great headway, because claims are coming in faster than settlements can be made by the board.

Then the Undersecretary of the Treasury, Mr. Mills, whom so many of you remember as one of the great tax experts here, appeared before our joint committee and advised an informal advisory committee to do the very thing that now the gentleman from Mississippi [Mr. COLLIER] objects to being done, namely to try to make these settlements without the long, tedious process of law. They have been fairly successful; the number of cases has been materially reduced. Mr. Bond says that there are 12,740 pending, and yet the gentleman objects to the efforts to expedite the work.

Then the gentleman from Tennessee [Mr. BYRNS] argues that because our special joint committee had not approved of the settlement of this Steel case the committee must be held to have disapproved of it. That is practically what he said. On the other hand, the law does not give the special joint committee the power or responsibility.

If the joint committee should have passed a vote not approving this settlement, it is probable that the officials of the Treasury would have inferred that the committee thereby assumed the responsibility of having the department proceed to defend itself in the court action which had already been filed by the Steel Corporation. Failing such action, however, the committee thereby indicated its attitude that the matter was one under the jurisdiction of the Treasury itself and for which the Treasury should be required to assume all responsibility.

There has been no dereliction on the part of the joint committee, and the insinuation that one man passes on all these things is not fair to the joint committee, of which the gentleman from Texas [Mr. GARNER] himself is a member. It is not fair in this way, that as the chairman has said he is continually in touch with our experts whether Congress is in session or not.

Mr. MOORE of Virginia. Will the gentleman yield?

Mr. TREADWAY. Yes.

Mr. MOORE of Virginia. Was this settlement conditioned on the payment being made on January 4?

Mr. TREADWAY. The chairman has explained that.

Mr. MOORE of Virginia. Was that attached as a condition to the settlement?

Mr. TREADWAY. No; I will ask the chairman to explain it in my time.

Mr. HAWLEY. The settlement was made to take effect on that day, but I do not remember that there was any statement made that if the settlement was objected to by the joint committee the settlement would not be made.

Mr. MOORE of Virginia. It seems to me extraordinary if it was not that the Treasury should have proceeded when they knew that the proceeding was pending in an acute form.

Mr. HAWLEY. I am not able to answer more definitely than that. My impression is that the settlement was made to take effect January 4, and if it did not take effect of course that would upset it.

WHAT HAS BEEN DONE BY JOINT COMMITTEE

Mr. TREADWAY. The inquiry of the gentleman from Virginia is pertinent and important. I shall be glad to answer him in detail in revising my remarks.

The principal reason for the prompt release of check to the United States Steel Corporation was to save interest on the total amount of the refund. Another reason was that plans had been made to meet this payment, and the Government, having the money on hand, under its financing plan would gain nothing by holding it. On the other hand, if the refund were not paid within the time limit the Government would be required to pay interest on the amount of the refund at the rate of 6 per cent per annum, which in this case would be about $2,465 a day. The time during which the Treasury Department was required by law to withhold payment of this refund expired at midnight on January 4, being the expiration of the 30-day period specified in the revenue act of 1928. It is probable that if the Treasury had not paid this refund promptly there would now be criticism of the amount of interest which would be accumulating each day.

Now, I want to refer to the work of the joint committee in the various cases referred to it. Here is a brief summary of what has been before the joint committee. The chief examiner of the joint committee, Mr. Parker, makes the following statement of the cases that have been referred to the committee:

Taken as a whole the overassessments submitted by the commissioner to the joint committee show careful, legal, and just handling in the face of many difficult problems.

The review of the overassessments is instructive as to the operation and effect of our revenue acts and as to certain inequitable results permitted under such acts.

Two hundred and ninety-six cases, or 92 per cent, have been clearly proper and allowable on the basis of the facts shown in the report of the commissioner to the joint committee.

Twenty-seven cases, or 8 per cent, have been doubtful on the report of the commissioner and have been specially investigated through the files from the Bureau of Internal Revenue or upon special inquiry addressed to the authorized representative of the Treasury Department.

In regard to the 27 doubtful cases, after special investigation, the following classification can be made:

Sixteen cases were found proper; 9 cases were not computed in accordance with the view of the staff of the committee, but nevertheless were not clearly illegal or outside of the discretionary authority vested in the commissioner by the revenue acts; 1 case appeared not to be in accordance with current board decisions and was promptly withdrawn for review by the general counsel's office when attention was drawn to this fact by the committee's representative; 1 case is awaiting information from the bureau on certain doubtful points.

It is of course apparent that the Members of the House would have no better conception of the intricacies of these cases if there were submitted to them all the documentary evidence accumulated over a period of years by the experts of the Treasury. This refund is based on the complicated tax reports of nearly 200 concerns which constitute the United States Steel Corporation. The selected men in the department have been specially assigned to delve into all the facts. Having confidence in their ability, confidence in the Secretary of the Treasury and his able assistants, the Undersecretary and Assistant Secretary Bond, it would seem to me to be the part of wisdom to act on their judgment. I am confident the House will approve the recommendations of the Treasury and appropriate the $75,000,000 called for in the urgent deficiency bill for the payment of refunds. [Applause.]

[Mr. TREADWAY had leave to revise and extend his remarks.]

Mr. WOOD. Mr. Chairman, I yield 10 minutes to the gentleman from New York [Mr. DEMPSEY].

Mr. DEMPSEY. Mr. Chairman and gentlemen of the committee, this question of the refund to the United States Steel Corporation comes before this House in a most peculiar way. The question has been raised as to the repayment to-day. If gentlemen will examine the report of the committee which is presenting this bill, they will find in that report the statement that the question of this refund to the United States Steel Co. was not before the House, that it was only before it in a retrospective or historic way, and that report was filed days ago before there was any intimation, as I understand it, that the gentleman from Texas [Mr. GARNER] would review this question.

Mr. GARNER of Texas. Mr. Chairman, will the gentleman yield?

Mr. DEMPSEY. Yes.

Mr. GARNER of Texas. It was filed long after I made the statement on the floor of the House.

Mr. DEMPSEY. The gentleman, as I understand it, did not say that he was going to contest this question on the hearing of this bill.

Mr. GARNER of Texas. What does the gentleman think I was talking to? Just to hear my voice ring?

Mr. DEMPSEY. The gentleman was talking to the matter generally, but the fact is that that report has been here all these days with that statement in it.

Mr. GARRETT of Tennessee. Does the gentleman mean the report on this deficiency appropriation bill?

Mr. DEMPSEY. Yes.

Mr. GARRETT of Tennessee. Oh, the bill was only reported yesterday. The report is dated as of January 4.

Mr. DEMPSEY. The report has been in type and available for days.

Mr. GARNER of Texas. The gentleman is not accurate in that.

Mr. DEMPSEY. That is my understanding.

Mr. GARNER of Texas. I have tried to get the hearings on this case.

Mr. DEMPSEY. I am talking about the report.

Mr. GARNER of Texas. The report could not be gotten up until the hearings were finished.

Mr. DEMPSEY. Oh, yes; it could.

Mr. GARNER of Texas. Does the gentleman mean to say that the committee would make up its report without any information on the subject?

Mr. DEMPSEY. Oh, no; but with the minutes of the reporters before them. But let us get to the next question. Is there anything unusual in this matter? This House again and again, and as a matter of universal and uniform and uninterrupted practice, has always observed this course. We take the report from the proper department, and while we swear witnesses, that report in itself and of itself is more important in the usual and ordinary case than all of the hearings of all of the witnesses before us. That should be peculiarly true in this case. Why? In many cases this House has the same facilities for examination, for investigation, as the department itself, but in a case like this, this House has no facilities, has no way in which to make the examination. Unless it finds somewhere in some incidental way something to challenge, it has to accept the finding of the department. Here we find a report so voluminous, involving such a tremendous amount of testimony in its various forms, that it would take trucks to carry them—a whole line of trucks. Here are these gentlemen sitting on this joint committee, listening for five hours, and the gentleman representing the Democratic side [Mr. COLLIER] says, after hearing it, that he would not presume, after spending five hours, to even express an opinion upon that which it had taken 10 years of expert investigation to determine.

In addition, then, to the usual safeguards of the department itself we have this joint committee, and this joint committee does not undertake to challenge, but, on the contrary, the gentleman from Mississippi expressly said and said repeatedly and clearly that he did not challenge the motives, and that all he questioned was the method. The gentleman did not point out a method. He did very clearly cover the point that several methods have been excluded by the Court of Claims and the Board of Tax Appeals, so that the Treasury had only a limited opportunity and a limited way to investigate, and he suggested no alternative to the method that was employed. He did not tell us how that method was improper. He said it was a bargain counter, but I never knew in my experience as a lawyer

or as a legislator where a compromise was reached where it was not by the bargain-counter method. Each side has to concede, each side has to give way, each side has to admit that it can not get all that it contends for, and in that way and that way only can a settlement be reached. In addition to the usual methods having been pursued, and, secondly, the protection of the joint committee having been afforded, we have this, which I feel sure I am voicing the sentiment of the whole country in saying: We have the most remarkable, the most eminent Secretary of the Treasury, who has given this country a most unusual administration of that great and high and responsible office. Years after all of us have passed, I hope, to our reward, this Secretary of the Treasury will have his memory enshrined in the minds and in the thoughts and admiration of the American people, in line with and on the same kind of pedestal as Alexander Hamilton, the first great Secretary of the Treasury. And we will not forget also that we have an admirable Commissioner of Internal Revenue, Mr. Blair. So we have the thought that we have at the head of this department of the Government men in whose integrity and ability we can repose the utmost confidence, and then when you come to subordinates, they are the highest paid, the most expertly trained, the ablest men in the service of the Government.

And they have only one conscious object, and that is to do justice and right, and, secondly, back of all that unconsciously all the time is the desire, the honest and proper desire, to make a record for themselves, to show that they have done well for this Government that they are serving, that they have preserved its interest and protected it at all times, that they have given it the best service it could secure in intelligence, in integrity, in a conscientious and active way, and every man here who is brought into contact with this department finds in each and every instance that the individual taxpayer never receives one penny more than that to which he is honestly and justly entitled, and as to which he can show his right to have it. It is not a question of his right to it. He must demonstrate to these vigilant and determined men a clear and indisputable right before he receives one penny of refund. There being no charge of fraud, there being no suspicion of collusion, there being the admission that these men have acted uprightly and honestly and with intent to protect the Government; and it appearing that in this particular case a claim of $160,000,000 is to be settled for $26,000,000, a most splendid result for the Government; and with this tremendous amount of evidence involved, with the case certain to take a prolonged period of time and to be litigated at enormous expense; and with this Congress having directed the Treasury Department, as it did by the act passed in May that it must do precisely what was done in this case, why should not the Treasury Department be commended for the work which it has accomplished, for the result that has been attained, rather than be criticized when it is admitted that there is no sound or just ground of criticism? No one points out any mistake.

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. BYRNS. Mr. Chairman, do I understand the gentleman from Kansas has but one more speech?

Mr. ANTHONY. Yes.

Mr. BYRNS. Then, Mr. Chairman, I yield the remainder of my time to the gentleman from Texas.

The CHAIRMAN. The gentleman from Texas is recognized.

Mr. GARNER of Texas. Mr. Chairman, I ask unanimous consent to extend my remarks in the RECORD by including in those remarks official communications from the Treasury Department and from the chief examiner of the joint committee of the House and Senate.

The CHAIRMAN. The gentleman from Texas asks unanimous consent to extend his remarks in the RECORD by including statements of the Treasury Department and of the chief examiner of the joint committee. Is there objection?

There was no objection.

Mr. GARNER of Texas. Mr. Chairman and gentlemen of the committee, I did not intend again to refer to the question of estimates that I spoke about the other day when I had the pleasure of addressing the House of Representatives. But since my friend from Kansas [Mr. ANTHONY], as well as my friend from Oregon [Mr. HAWLEY], have referred to estimates, I think I shall again detain the committee for five minutes on that subject.

I saw in the newspapers, after I had made the statement on the floor of the House concerning the estimates and the misleading of the Congress by those estimates into the passage of a bill which they would not have otherwise passed, in my opinion, the Secretary of the Treasury said that my statement did not fit the settlement. He did not give the facts and he did not show wherein my statement did not fit the settlement. He also stated that he spoke with responsibility and that I spoke without responsibility. I do not know just what he meant to imply by that term, but if he meant to say that the Constitution of the United States threw around me a cloak that did not also protect him, for the purposes of this discussion or that discussion, the Constitution can go out of the window, so far as I am concerned.

I am going to utilize this five minutes, and I am not going to make a single statement myself; but am going to let the President of the United States make the statement. On December 4, 1928, the President of the United States, in response to his duties, sent a message to the Congress reciting the state of the Union, and among other things he said this—

> Last June the estimates showed a threatened deficit for the current fiscal year of $94,000,000. Under my direction the departments began saving all they could out of their present appropriations. The last tax reduction brought an encouraging improvement in business, beginning early in October, which will also increase our revenue. The combination of economy and good times now indicates a surplus of about $37,000,000.

That was on December 4. He also sent a message to Congress on December 11, and it reads, in part, thus:

> I have the honor to submit herewith for your consideration a supplemental estimate of appropriations for the Treasury Department for the fiscal year ending June 30, 1929, and prior years for refunding internal-revenue taxes illegally and erroneously collected, $75,000,000.

Now, it does not take a third-grade mathematician to tell the difference in the condition of the Treasury on December 11 and the condition on December 4. If you take $37,000,000 from $75,000,000 you will have $38,000,000 left.

But that is not all. We had in the meantime passed the Greek loan bill drawing on the Treasury for $12,000,000, a sum that would make the deficit $50,000,000. I stated then, and I repeat now, that as the result of misinformation given to the House of Representatives—not intentionally by the President; I do not suppose that anybody would say that any President of the United States would make an erroneous statement intentionally—but the facts showed that the Treasury were "in the red" for $38,000,000 at that time. Who caused him to make that mistake? Undoubtedly the Treasury Department was the place where he got the information on which he based his statement.

I said then that it was getting goods under false pretenses for the Secretary of the Treasury to come before the Committee on Ways and Means on the 6th day of December urging us to spend $12,000,000 on the Greek loan when, as a matter of fact, his officers knew there was a deficit of $38,000,000, and that, added to the $12,000,000 of the Greek loan, would make $50,000,000. I do not believe it is right in making estimates to fit them according to the way you want Congress to vote. I criticized it, and I criticize it again, and I think it my duty to criticize it.

Gentlemen have referred to the estimate I made a year or two ago on tax collections. That estimate was within $5,000,000 of being correct. In the consideration of that same bill Mr. Mills, the Assistant Secretary of the Treasury, when before the Committee on Ways and Means considering that legislation, estimated the refunds for this year at $138,000,000. I will put that extract from the hearing in the RECORD. (See Exhibit No. 1.)

I had the right to depend upon that estimate. It turned out to be $67,000,000 wrong. You will remember that I also told the House that if we should abolish affiliated and consolidated returns we would get $50,000,000 more. We got an admission out of the Treasury that we would get $25,000,000, and I made an estimate of $50,000,000. I made some other estimates that accounted for $117,000,000 that you could reduce taxes. But I do not want to refer to the estimates to a greater extent. I believe I have had pretty good luck in making estimates, at least I am willing to compare mine with the Secretary of the Treasury, with all of his information. For the last seven years take the record and check it up and see whose estimate was the closest.

But I want to discuss just for a moment the basis of information that this House has with reference to this refund. Now, I want each of you to ask yourself this question: What do you know, if anything, about the merits of the $75,000,000 for tax refunds in this bill?

Are you willing to go home to your constituency and say that you voted for an appropriation of $75,000,000 to pay refunds, when you had no knowledge as to the merits of a single one of them? The highest approval we can give of any claim against the Government, the final and conclusive approval of that claim against the Government, whatever it may be, is by

appropriating the money to pay it, is it not? And you are going to appropriate $75,000,000 for refunds that you have got to admit to your constituents you do not know anything on earth about the merits of. Now, does anybody controvert that?

Whose duty is it to find out about the merits of a claim in excess of $75,000? It is the duty of Mr. HAWLEY and his joint committee. In addition to that it is the duty of the Appropriations Committee in the final analysis, but it is the duty of the joint committee to give you information. When I appeared before the Appropriations Committee day before yesterday they complained very bitterly and said it was not their fault that you had no information; that they had a duty to perform and they could not afford to go into the question of the merits of this proposition, but it was the duty of the joint committee, did you not? I await someone to dispute it. Gentlemen, I do not control the joint committee. I wish I did. I would have an investigation, and the only information we have ever gotten is because the clerk of the joint committee, a conscientious fellow, said this was such a stupendous claim that he wanted Mr. HAWLEY to call the committee together, and he did call it together for that purpose the first time since it has been in existence. And what did it do? It had a 5-hour hearing, and it developed the facts as they have been set out here by Mr. COLLIER and others. It developed a fact that you did not know anything about and that I did not know anything about, and no one would ever have known anything about it if we had not had this little investigation.

It developed the fact that instead of a refund of $15,000,000, the Steel Corporation had already received $31,000,000 on the same year's taxes. I said, "That can not be so." They said, "Yes, sir; that is so; we have already refunded that to them by giving them credit on their taxes for that year, a credit of $31,000,000." Then we tried to find out how they settled this case. We found out from the Assistant Secretary of the Treasury that they settled this case by considering four methods, not by regulations of the department, which had been made down there for 10 years, good regulations, regulations that all taxes ought to have been settled by and regulations that most all taxes have been settled by. He did not settle it by the regulations of the department, he did not settle it according to the decision of the Board of Tax Appeals, neither did he settle it by the rule of the Court of Claims, but he settled it by another rule, with the assistance of the opinion of the lawyer of the Steel Corporation. That is in the hearings. He considered four sources. He considered, first, the regulations of the department; second, the Board of Tax Appeals; third, the Court of Claims; and, fourth, the opinion of the lawyer of the United States Steel Corporation. Now, I said, "That is wrong, Mr. Secretary." "Well," he said, "I think we are getting off for less than if they went into court." That was his reply. I said, "Mr. Secretary, if the Steel Corporation does not owe these taxes you ought not to cheat them out of them and force them to pay more than they ought to pay; you ought not to bargain with them and get them to pay more than the law requires." That is the reason I condemn this bargaining transaction across the counter by the Treasury Department.

Ah, I think I can illustrate it so it will impress you. There was a report over here the other day about a refund to another company. There was a report about a refund made to the Aluminum Co. of America but you only saw this information in the newspapers. You get your newspaper and look at it and you will see this information: "Refund to the Aluminum Co. of America, $621,626.04." That is what you saw in the newspaper but that was not all of it; that was not the picture. In that same document, which is not given out for publication, which is a secret, a secret to all intents and purposes as far as you gentlemen are concerned and as far as I am concerned, until I got permission to look at it. I am a member of the committee, but the clerk over there is so careful, so jealous of his prerogatives and not wishing to extend them or to exceed them that he said, "I wish you would go and see Mr. HAWLEY and get his permission." I did and I did get some information. I am a member of the committee but I can not even see the papers in his archives which are official documents, sent there by virtue of law. The Aluminum Co. of America had already been allowed as a credit $665,177.18, and in abatement they give them just a little Christmas present, $622,249.46, or a grand total of refunds and credits for taxes paid in one year, 1917, of $1,287,426.64.

Now, here is what I want to call your attention to. How did they arrive at that amount? According to Mr. Bond, in the Treasury Department, they arrived at it by four different methods.

One, the regulations of the department, the decision in the Grand Rapids case and the United Cigar Stores case, and what else? The attorney for the Aluminum Co. Mr. Mellon, this grand Secretary that you hear so much about to-day, this man who will never perish from the thoughts of the American people when we are gone and forgotten, this man sits on that side of the table as Secretary of the Treasury, and if reports are correct that he owns the Aluminum Co., Mr. Mellon, the citizen of Pittsburgh, Pa., sits on this side and determines how much he owes the Government.

Do you think this system is a good system? Do you believe it is a good system that you have no regulation or measuring stick to see definitely how much is owed by taxpayers? If you had a law that would say to the Aluminum Co., "You owe so much in taxes and you can not get off for a dollar less," that would be one thing; but instead of that, according to the hearings, both before our committee and the hearings here, they try to settle it as a compromise settlement.

Do you think the Government is going to get the best of it when the Aluminum Co. of America starts in to compromise with the Secretary of the Treasury? [Laughter.] We have laws in most States that a judge can not sit in the trial of a case where he has an interest. I know that is the law in Texas, and I presume it is the law in most of the States, because undoubtedly it is a wise law. Here is a man sitting in judgment on large sums of money, millions of dollars involved, trying the case, if current reports are correct, of a concern in which he controls or owns a majority of the stock.

Do you believe this is good public policy? Do you believe you can defend this before the American people? Ah, sir, what I would do if I were Secretary of the Treasury under present conditions! The Secretary, as I recall, resigned as a director in sixty-odd corporations when he went into the Treasury Department. They have had applications for refunds.

Under the law at the present time he can sit down and reach an agreement with any one of them that is binding on the American people, accepting 10 cents on the dollar for the amount of taxes due. I would be proud to say ," Yes; I own these great corporations or I am interested in them. I have made a success in life." I admire him for the success he has made in life. I am not opposed to big business; I am for big business and I believe in it. I believe it has helped to develop this country and I am not an enemy of big business; but I would be proud of the fact, if I were Andrew Mellon, that I had made a success in business and I would herald to the American people the corporations in which I was interested and how much taxes they had paid and how much in refunds I had given them and how many credits they had been given, and I would say I was proud of it; but he will not do this. He will not even let you look at them.

Secrecy! Why, Mr. TREADWAY, you were speaking about my leaking, and I thought at the time that every time we have a meeting over there, generally, TREADWAY is the first one to get to the door to leak and I think he was jealous because he was not there that night. [Laughter.] I think he was just a little jealous, and I am not blaming him for not being there because a man of his social standing and qualities could not afford to come out at night even to attend a meeting of the joint committee. [Laughter.]

Now, Mr. HAWLEY, I am going to call on you, sir. We have some records over there and I am going to put some of them in the RECORD. Here is one of them which was sent to each Member. I tried to get it published, you will remember. We have on the Army bill, how many pages of hearings, Mr. ANTHONY?

Mr. ANTHONY. About 1,000.

Mr. GARNER of Texas. About 1,000 pages. For one-half the money it took to take down and print the hearings on one appropriation bill you can publish every official record there is in the joint committee. Why do you not do it? They are official documents. They are documents of that committee bearing on the duties which you assigned us to perform. You can not get to them. Let me see one of you come over there and try to see one of them. I could not even see one of them without getting permission. I ask you now, sir, will you publish and put in print the actions of your committee since it has been in existence? I do not see Mr. HAWLEY here just now, but I call on him, as a matter of public record, to make them public and let the country see them. You ought not to be ashamed of them. And whenever you find a Member of Congress who is so anxious, outside of matters of foreign affairs, to keep everything in his committee secret he is not trying to serve the House of Representatives or the country, in my opinion, like he ought to.

Mr. DEMPSEY. Will the gentleman yield for a question?

Mr. GARNER of Texas. Yes; but I do not want any oration like you made this morning. I want a question.

Mr. DEMPSEY. The chairman of the gentleman's committee said that there was an understanding in the committee that the proceedings of the committee should not be made public because

they might embarrass the lawsuit and lose that case to the United States if the case proceeded.

Mr. GARNER of Texas. I will tell you about that, and that will satisfy you without asking any more questions. Here is what happened: I notified him in advance that he must have a stenographer there. I asked for a stenographer. I said I thought we ought to have our hearings taken down, and when we got there we discussed the matter and the Treasury Department said it might hurt them. That is what they said. They decided not to have it taken down. I said, "I am going to tell everything that happens in here." I gave them fair notice right then. Now, there was but one thing to do, and that is what they do in some of the churches—I believe in the Baptist Church—and that is to "withdraw from me." [Laughter.] Now, they did not withdraw from me, and I kept my promise, because I am telling it and I am going to continue to do it. [Applause.] So I have not breached any faith, to say the least of it.

Mr. LOZIER. Will the gentleman yield?

Mr. GARNER of Texas. Yes.

Mr. LOZIER. There was no agreement in which the gentleman from Texas, and the gentleman from Mississippi [Mr. COLLIER] participated that the proceedings should be kept secret?

Mr. GARNER of Texas. No; never. Now, Mr. HAWLEY and Mr. ANTHONY—God bless him—I do not think there has ever been a better man in Congress than DAN ANTHONY. [Applause.] I have had a good deal better opportunity of knowing him than many of you gentlemen have. [Applause.]

They want it to appear that the Steel Corporation is all that is involved. Let me tell you something. I went to the Treasury Department, or rather I telephoned up there—but before I get to that I will give you some of the other cases that came up this fiscal year. I said to Mr. Parker, I want you to give me five of the next largest cases that is to be paid out of this money. He said, "Mr. GARNER, I do not want to do that, I may get into a good deal of trouble," and asked me to get Mr. HAWLEY'S permission. Mr. HAWLEY said, "Yes; give them to him," and so he gave them to me. They amounted—these five cases—to twenty-four million and some dollars. None of these were published in the papers among the list of refunds for they were for this fiscal year but are to be paid out of your money—money that belongs to the people of this country. You never knew anything about it; now five of these largest cases I will put in the RECORD. (See Exhibit No. 2.)

I did not know about these credits being so much until we got into the Steel Corporation. The other day I said that $65,000,000 would go back to the Steel Corporation. The Treasury Department said that my statement did not fit the facts. "Well," I said to myself, "you better look into that proposition, perhaps you have made a mistake." I based it upon what Mr. Parker told the joint committee. I said to Mr. Parker, "You told me this, and Mr. Mellon said that my statement does not fit the facts, and that is the only one I do not know about. Will you not give me the items sustaining the statement?" I said, "Parker, does your record and the Treasury Department's agree?" He said, "I think they would." I said, "I wish you would go up there and see the Treasury Department and let them audit this statement that you have given me." He came back in a few days and said that they had looked it over and made a change of $2,000—a change of $2,000 out of a total of $69,000,000.

Now, remember this—the tax that was voluntarily rendered under the Democratic administration, and this greatest Treasurer of all times since the days of Alexander Hamilton—has given back $69,000,000. Does that shock anybody? This angelic company that voluntarily paid the money. The Treasury Department should have said, "I will not charge you what McAdoo increased the amount; we will accept the $199,198,000." But instead of that Mr. Mellon cut it down to $173,000,000—from $217,000,000. I say I don't know whether that is right or not, but somebody ought to know besides the Treasury Department.

This House ought to have some information in a transaction of that character. Ah, sir; we have some. They would make it appear here that there is no criticism of these refunds. You remember that I asked Mr. HAWLEY when he spoke a few moments ago if this man was his agent, and he said yes. He is the only man that goes to the Treasury Department. HAWLEY does not go up there, I do not, and we do not have a meeting more than once a year, but this fellow goes up there and examines. The law says that the committee can go up there and look at it, and he has gone up there as the agent of the committee and he has looked at it. I want to show you how he has to do to defend himself. You remember the other day that you saw something about the R. J. Reynolds Tobacco Co. being refunded $6,500,000. Was there any criticism of that by the joint committee? Yes. This agent criticized it and protested against its payment. How else could you protest except through this joint committee? This man went up there and examined it, and here are 25 pages of manuscript urging three good reasons why it should not be paid. Did that have any effect on the Treasury? No. They said, just like BILL WOOD says, that that committee was never intended for any purpose, and that it is not worth a damn anyway. I am going to put the record of this case into the RECORD. He uses the term "X Tobacco Co." He was afraid to put it in its right name, but in the course of his statement I easily identified it with the Reynolds Tobacco Co., because it is the largest one, and is the largest refund. So I take the responsibility here and now, although Mr. Parker marked it as the "X Tobacco Co.," of saying that it was the Reynolds Tobacco Co., so the record may show it. If somebody wants to deny it, I shall furnish the proof. I am going to put that into the RECORD. (See Exhibit No. 3.)

Mr. Parker points out three distinct reasons why that thing should not be paid.

They say that you must not impugn the Treasury Department. I do not charge the passing of money from hand to hand. No. But what is the difference to me when I lose a billion dollars from the Treasury Department, whether it is handed out, sneaklike, at night, or by rules and regulations and bargains across the counter, where I lose the same amount? My loss is the same, whether you filch it from my pocket or barter it away across the table.

I shall make another statement, although it may cost this fellow his head. I forced him yesterday almost to give me this statement. I said, "Parker, it is from your source and your source alone that we get this information. I have nothing here except what you furnish me; I have no way of determining from that data how much has been paid by the Treasury Department that was not authorized in law or in equity, and I want you to tell me your best judgment of how much money the Treasury Department has paid out in the few cases that you have examined that was not justified by law and equity." He said, "Mr. GARNER, I do not like to do that." I said, "By the gods, it is your duty to do it. You are drawing a salary from this Government, you are an honest man, and you ought to have courage enough to speak." He did not want to say anything, because he might see in the distance his job vanishing, and I do not blame the fellow, but I forced him along, and he finally said at least $20,000,000, which I have questioned. In the few cases that Mr. Parker has examined in the Treasury Department—and he is an expert accountant and engineer and a man of long experience, who served in the Treasury Department, under an almost forced admission—he says that in his judgment the Treasury Department has handed back to the taxpayer over his criticism and protest where he had no legal or equitable right to it, money to the amount of $20,000,000! In the face of that, the only information you have, coming from your own committee, how can you make an appropriation of $75,000,000? Why not delay this appropriation until you can get an investigation? You are the only power, Mr. ANTHONY, that can reach this situation. When you withhold this $75,000,000, the Treasury Department and the country are going to understand that somebody is going to look into the matter. Why do not you look into it?

I am willing, Mr. LONGWORTH, for you to appoint a committee of five—three Republicans and two Democrats—and you may select your own committeemen with the experts that you now have, who are drawing salaries, a half dozen of them, of from three to six thousand dollars a year, to make an investigation. There is plenty of time. Let us investigate the matter. But they will not give us any information at all, and Mr. HAWLEY had the audacity to say that that was the fault of Congress! True, Congress passed a law, and it is on the statute books, but does anybody remember how strongly the Treasury Department fought the publicity of tax returns? Nobody led the fight more than Mr. Mills and Mr. Mellon against publicity. This joint committee is a compromise on that proposition, and as Mr. WOOD said, of course, speaking for the Treasury Department, because he hikes up there any time he gets the slightest information, and after I made the statement there to the Appropriations Committee and it was taken down, of course Bill hiked it up there within an hour; but as Bill said, the joint committee was never intended for any purpose, and it was just $40,000 to keep them from looking at Uncle Andy's books, and it was a cheap price, was it not? To keep them from looking at the books. Do you not think it is cheap? But you said you did not think it was worth a damn anyway, and I agree with you, unless HAWLEY would do something with it.

[Laughter.] I will put that statement of Mr. Parker's into the RECORD. (See Exhibit No. 4.) Sixty-nine million dollars. Remember, I said $65,000,000, and when I make estimates I try to underestimate. I thought, since I saw so much of these credits and refunds, that the credits were outrunning the refunds. Mr. ANTHONY, I reckon that you made the report, or your clerk did, or Mr. WOOD's clerk, and you reported how much back taxes you had collected, and how much refund there was. According to the RECORD here, you ought to have reported the credits, which may be more than a billion dollars.

Be fair. Give the full picture. You would have done it, I guess, if you had had that information; but the records show here in the steel case that the credit was twice the refund, that it had already been credited with twice the refund that nobody knew anything about. I telephoned to Mr. Alvord, and I said, "Alvord, a certain friend of mine has told me that they have a list of credits up there." I do not believe that Mr. Alvord would deliberately say anything that he did not believe to be true. If he had the knowledge he would tell you the truth about it. I telephoned, and I said, "I would like you to send me a list of credits that you have—corporations—prior to the time that they would have to report to the joint committee." And he said, "I have not a list of them, and it would take considerable labor to do that."

"Well," I said, "I thought you had a list. If you have not a list, will you send me up 25 of the largest corporations?" He said, "I think I can send them up to you." He did. What do I find from them? I am going to put this all in the RECORD. (See Exhibit No. 5.) He does not give me the names of the corporations, but you can get them over in the committee room now. What was the object in not putting in the names? Mr. Alvord did not want to take the responsibility, and I did not want to see him get his head cut off. I said, "All right, Alvord; send them up without mentioning the names."

Now, what do I find on the subject of refunds? "Adjusted by refunds, $1,026,000; adjusted by credit, $24,562,000; adjusted by agreement, $5,496,000."

Mr. AYRES. Mr. Chairman, can the gentleman state in what years those occur?

Mr. GARNER of Texas. Yes. Original taxes for various years.

How much of these taxes are being refunded and go back to the taxpayers? They try to make it appear to you that the percentages are small. But take this case of the United States Steel Corporation: $173,000,000 taxes; $69,000,000 returned. They are figured out in the percentages. Here is one of these corporations—I do not know what one it was, but it was a good large one: Original tax, $22,000,000; credit—not refund, but credit—$7,787,686. In some cases they are more than 33⅓ per cent. Here is an original tax for 1919: $927,000; and tax, none. He gets all of his back. Andy Mellon just made a clear swipe of his, and gave them all back.

Mr. MOORE of Virginia. Mr. Chairman, will the gentleman yield?

Mr. GARNER of Texas. Yes.

Mr. MOORE of Virginia. These credits are all practically refunds?

Mr. GARNER of Texas. Yes; they are all practically refunds. But you do not know anything about them, Mr. MOORE, because the Secretary of the Treasury does not have to report it now under the law.

Mr. ANTHONY. Mr. Chairman, will the gentleman yield?

Mr. GARNER of Texas. Certainly.

Mr. ANTHONY. Are any of these so-called credits offsets against additional taxes?

Mr. GARNER of Texas. Certainly. Here is a man from the Steel Corporation, the best taxpayer of the country. The Treasury Department says it is one of the finest that there is. Here is an agent from the Steel Corporation paying taxes every time they tell it to. But they never said anything to CARTER GLASS, or McAdoo, or Houston about giving them back anything. Every time that McAdoo, or CARTER GLASS, or Houston examined them their taxes went up, and every time they examined them under Uncle Andy the taxes went down.

That is a darned funny thing how they can do that. Four of them or five of them under a Democratic administration, all good auditors, lawyers, engineers, accountants—in all cases that went up to McAdoo and were investigated the taxes went up. Under CARTER GLASS an audit was made and they found more taxes. Houston went in, and before he went out they paid him $4,000,000. Then Uncle Andy gets in and they wait to size him up; and they wait until after the election of 1924, and then they asked him to give them back $44,000,000. Each audit that Andy made resulted in the taxes being reduced.

Gentlemen, does that seem natural? I wonder why the Aluminum Co. of America did not say something to McAdoo and to CARTER GLASS and to Houston about paying too much taxes. They paid too much in 1917. They never said anything about it until Andy got in, and then Brother Charles, or his nephew, or whoever it was, said, "Mr. Mellon, you used to be a director of the company. It is true we were prosperous, but when those damned Democrats were in power they collected too much money from us. I want you to adjust this thing." Now, the Secretary of the Treasury did it without law or regulations. There is no rule or law governing the department; no rule or law by court or by a board of tax appeals or a court of claims. The agent said, "I want to tell you that the Democrats collected too much money, and I want you to adjust it." And Uncle Andy, like one of those little cupids, said, "We will see about it"; and he said, "Who is our best auditor?" They can make any kind of report you need. He sends them up, and audits it, and comes back and says, "It is right. For that one year alone McAdoo made you pay $1,187,000 too much." Of course Uncle Andy may not have had any stock in it, and was not interested; but he made the settlement.

Gentlemen, that is wrong. If it were my own brother, or a Democrat of any standing, I would say it is damnable. But you let a man sit across the table there and settle his own taxes without a rule of law or a regulation of the department governing him. When Congress inquires about it he says, "I can not let you look into it. You can not investigate it. You must not look into the facts, because I am the greatest Secretary of the Treasury since Alexander Hamilton. [Laughter.] I will say this: He is the greatest Santa Clause that has ever been in existence. There is nobody to whom he has not given things. I would like some of you to find out and tell the total credits that have been allowed.

I have got the total refunds and they are over $1,000,000,000. Up to this time you have provided for refunds over $1,000,000,000. They say nine hundred and ninety some millions, but that does not include this fiscal year. Now, from the investigation we have made it is shown that these credits are much larger in each instance than the refunds, we have a right to conclude that Andy has handed back to the taxpayers since he came into office more than $2,000,000,000.

Mr. WYANT. Will the gentleman yield?

Mr. GARNER of Texas. Yes.

Mr. WYANT. Has the gentleman a statement showing the amount of back taxes which have been collected by the present Secretary of the Treasury?

Mr. GARNER of Texas. Oh, yes. All you have to do, sir, is to read the report, and it amounts to $4,000,000,000, plus. I never knew that the people in this country were such gumps, especially these big fellows. You know they seem to be the only people who did not know how to render their taxes, or did not have sense enough to render them, these rich corporations. Everybody had sense enough to render their taxes and know how much to pay, but the rich corporations that did not have any lawyers; they did not have any accountants, they were short of engineers and did not have any way of ascertaining how much taxes they owed, just came in and made a big rendition because they loved the country, and then when Andy got in they said, "We don't love it quite as much as we did; give it back to us," and Andy has been giving it back ever since at the rate of a couple of hundred millions to $400,000,000 a year.

Now, gentlemen, if you will refuse to make this appropriation here is what will happen—and you are going to vote on it; you are going to do that; you are going to approve this by your vote on paper, if I am not mistaken—if you will refuse to make this appropriation that fellow sitting there, Mr. HAWLEY, that other bald-headed fellow that sits in the Speaker's chair, and the leader on your side, will get together and say, "Now, they are not going to give this money; we have got to make an investigation so we can get the confidence of this House," and they will make it. Why should it not be made? Mr. Mellon, are you afraid for this House to look into your administration? If you are, then there is all the more reason why we should look into it. If you are not afraid to have it looked into, why do you not welcome an investigation with open arms and say, "I am ready; come on." You will get your money and no honest taxpayer will lose a dollar by that investigation. That is what I am driving at now, trying to get Mr. HAWLEY and his joint committee to do what you asked them to do when you created them and what you expected them to do and what they have not done. But Mr. Parker has attended to his duty. He has communicated with the committee. Mr. HAWLEY was not present to answer my question so I will ask him again. For one-half the cost that Mr. ANTHONY spent in reporting his last bill you can have all the proceedings before the joint committee printed. Will you do it? I will give you time to answer in my time.

Mr. HAWLEY. The 1928 act authorizes us to print, and requires us to print, the reports which we get in at the end of the year, and that will be done.

Mr. GARNER of Texas. Are you willing to print the correspondence which your agent, Mr. Parker, has sent in? Why do you not print it in a public document so that these fellows here can see it? You have the printing privilege and by printing it you will let the Congress see what you have in there.

Mr. HAWLEY. I do not think it is within the province of the chairman of a committee to determine a question of that kind. I think that is for the full committee.

Mr. GARNER of Texas. Now, just wait. Now, then, Mr. HAWLEY, you are the chairman of the committee. Will you call them together and ask their permission to print it?

Mr. HAWLEY. There will be a meeting of the joint committee and I suggest to the gentleman from Texas that the matter of printing be taken up at that time. [Laughter.]

Mr. GARNER of Texas. Well, poor old HAWLEY. I feel sorry for him and I will tell you what he was not deserving of. They gave him a dirty dig in the Treasury Department. They did not think what they were doing or they would not have done it, but I am going to read it for the benefit of you ladies and gentlemen on this side.

HAWLEY and Senator SMOOT were in favor of approving the steel settlement. It is my recollection that SMOOT made the motion and HAWLEY wanted to do it. DAVE REED is a pretty smart fellow and I think one of the ablest men in this country. He was fair and frank enough when we started into this case to say, "Gentlemen, my firm is attorney for the Steel Corporation but not its tax attorney." I said, "That does not disqualify you at all in my opinion, because I think you are conscientious enough to serve the Government instead of serving your firm," and I believe this about DAVE REED; and when the approval came up to DAVE REED, he said, "No; in view of this hearing I will not take the responsibility of approving it." He said this although the corporation is located in Pittsburgh, Pa. Poor HAWLEY wanted to just approve it. HAWLEY is such an obedient vassal that whatever Andrew Mellon would ask him that did not involve dishonor he would do. He has no judgment on the subject. He does not want any, he does not need any.

Mr. HAWLEY. Will the gentleman yield on that point?

Mr. GARNER of Texas. Certainly, I will yield.

Mr. HAWLEY. Let me ask the gentleman two or three questions. The Secretary wanted the estate tax repealed, did I not oppose it?

Mr. GARNER of Texas. You did, and I commend you for it.

Mr. HAWLEY. He also wanted the intermediate brackets of the surtax changed, did I approve of that?

Mr. GARNER of Texas. You changed them downward, HAWLEY.

Mr. HAWLEY. Not this last time.

Mr. GARNER of Texas. No; not this last time and I do not blame you. When you put them at 20 per cent, Mr. Mellon said he would never ask for any lower rate.

Mr. HAWLEY. That is not answering the question. They proposed a revision of the intermediate brackets downward and I opposed them.

Mr. GARNER of Texas. Sure; because he was violating his agreement and you would not violate yours. I just said that about the gentleman.

Mr. HAWLEY. They also opposed the repeal of the automobile tax and I favored it.

Mr. GARNER of Texas. Yes.

Mr. HAWLEY. I might go on and give other instances.

Mr. GARNER of Texas. That is all right. You are doing very well, HAWLEY, and I hope you will keep it up. [Laughter.]

I tell the House what I wish, gentlemen. I love this House of Representatives. I have served here a quarter of a century. I think that in the House of Representatives lies the safety of the Republic. Ah, sir, I just wish you, HAWLEY, had a little iron up your backbone like Sereno Paine and Claude Kitchin had and would tell the Treasury Department what to do rather than have them tell you what to do. [Laughter and applause.] That is what you ought to do. Let the House of Representatives and the Ways and Means Committee, that the Constitution provides shall raise revenue, do the job, rather than have the Treasury Department crook its finger and tell you just what you should do and how you should do it.

Mr. HAWLEY. Will the gentleman yield again?

Mr. GARNER of Texas. Certainly; I will always yield to the gentleman.

Mr. HAWLEY. Has not the gentleman just agreed that I have disagreed with the Treasury in some matters involving hundreds of millions of dollars?

Mr. GARNER of Texas. Yes; and I just said that you have done pretty well and I hope you will do better. [Laughter.] You see HAWLEY wanted to approve this.

The CHAIRMAN (Mr. RAMSEYER). The time of the gentleman from Texas has expired.

Mr. GARNER of Texas. May I have 5 or 10 minutes by unanimous consent?

The CHAIRMAN. The time has been fixed by the House.

Mr. GARNER of Texas. Could the gentleman lend me two minutes?

Mr. WOOD. I will give the gentleman 10 minutes if the House will consent to it.

Mr. GARNER of Texas. I think the Chairman holds the committee can not change the time.

The CHAIRMAN. The committee can not change the time.

Mr. GARNER of Texas. Yes; can you let me have two or three minutes?

Mr. WOOD. I will give the gentleman five minutes of my own time.

Mr. GARNER of Texas. Thank you. That is very generous, Bill. I tell you, you are opening up and there is hope for you yet, old fellow. [Laughter.]

Now, the Treasury Department through Mr. Bond, communicated on December 20, after this hearing with the joint committee, addressing the letter to Hon. WILLIS C. HAWLEY, chairman of the joint committee, House of Representatives. Among other things he explains the Steel case, and here is what he said:

> The Treasury does not expect the committee to approve the refund. To do so would require it to devote months to exhaustive study of the case.

HAWLEY devoted five hours and wanted to approve it and the Treasury said, "Why, you simpleton, you could not approve it intelligently without months of exhaustive investigation."

Mr. HAWLEY. Will the gentleman quote the words exactly, because I have a remark to make to him on that subject. There is something about "intelligence" there.

Mr. GARNER of Texas. I yield to the gentleman on intelligence at once, so there will be no discussion about that. I am afraid I would get the worst of it on that.

Mr. HAWLEY. And the imputation was as much against the gentleman from Texas as it was myself.

Mr. GARNER of Texas. No; because I did not want to approve it and you did. You were going with the Treasury. I knew it took more information than we had to intelligently approve it.

Mr. HAWLEY. But the gentleman had an opportunity, an official opportunity, to express his disapproval at a time when it would have counted.

Mr. GARNER of Texas. Yes; you tried to get me to do that and I declined. I saw the trap. It did not even have any paper over it like the traps they set for ordinary animals, and I said, "No; I will not jump into that trap."

Why, if DAVE REED could not approve this, if the Treasury Department says it would take months of exhaustive investigation to determine the merits of the proposition, are you going to determine it and approve it without that information by voting this appropriation?

I repeat that the highest approval you can possibly give any claim against the United States is approval by making the appropriation by the Congress, and you are proposing to approve all these things I have referred to by making the appropriation of $75,000,000 carried in this bill.

It is a long time that the American people have been coming to this question. It may be that they will forget it. It may be that the newspapers will not give the country a picture of it. I believe that they will give us a square deal. I want the country to understand that a man is in the Treasury Department, sitting across the table, bargaining with taxpayers, settling these claims without law.

Ah, gentlemen! Look at this practically. Supposing the Secretary of the Treasury was a bad man. Let us take out the purity and exalted character that has been pictured of him and reverse the picture and say he was a bad man. What an opportunity! He could say to one corporation "You pay me or I will take you by the neck"; and he could say to another corporation in competition with it, "Come on, I will refund 50 per cent of your taxes." He could also, if he happened to be a politician, which I know the the present Secretary is not—he could if he wanted to build up the greatest political machine in the world, because he would have every taxpayer under his thumb. He could not only raise $6,500,000, which the Republican Party had in the last campaign, but he could raise $10,-

000,000 in as many days, and every cent of it out of the taxpayers' money.

That system is wrong, and I predict that if he administers this office for another four years he will destroy this system because he will destroy the confidence of the American people in the system, and when he does that he will destroy the system. [Applause.]

The CHAIRMAN. The time of the gentleman from Texas has again expired.

EXHIBIT No. 1

TAX REFUNDS

Let us see what appropriations the Treasury Department has asked us to make during the fiscal years beginning with 1921, either for refunds in the current fiscal year through deficiency bills or in the succeeding fiscal year in the regular Treasury appropriations:

During the fiscal year 1921 we were asked to appropriate and did appropriate $22,635,000.

During the fiscal year 1922 we were asked to appropriate and did appropriate $67,590,500.

During the fiscal year 1923 we were asked to appropriate and did appropriate $133,105,000.

During the fiscal year 1924 we were asked to appropriate and did appropriate $117,000,000.

During the fiscal year 1925 we were asked to appropriate and did appropriate $150,000,000.

During the fiscal year 1926 we were asked to appropriate and did appropriate $149,250,000.

During the fiscal year 1927 we were asked to appropriate and did appropriate $175,000,000.

During the fiscal year 1928 we were asked to appropriate and did appropriate $173,000,000.

Now, in this fiscal year 1929, there are two appropriations for refunds pending in the total amount of $205,000,000.

From the above figures there can be no doubt as to the tremendous increase in the refundment of taxes. It should also be remembered that this only represents a part of the distributions to taxpayers, for it is probable that the credits which are made against other taxes due are nearly as large as the refunds.

Now, the Treasury told us in October, 1927, that the refunds had reached their peak. At this time before the Ways and Means Committee Mr. Mills estimated 1928 refunds at $151,000,000 and 1929 refunds at $138,000,000. (See hearings before Ways and Means Committee—revenue revision, 1927–28, p. 6.) It can be seen that he was much too low.

The Congress has never had a comprehensive idea of the reason for the enormous increase in refunds. We do know from fragmentary information that the Secretary of the Treasury himself has benefited to a considerable extent from these refunds. I believe it is proper in view of the above to call for the following information:

First. A list of all refunds, credits, and abatements of income, war profits, and excess profits taxes and interest thereon made to the Secretary of the Treasury, Hon. A. W. Mellon, his brothers, sisters, daughters, and cousins, and/or to any corporation in which any of them individually or collectively own any of the corporate stock, and/or to any corporation whose stock is held to any substantial extent by a trust, holding corporation, or other agency, which trust, holding corporation, or other agency is controlled directly or indirectly by the above-mentioned individuals, individually or collectively.

Second. In case the above can not readily be furnished, then the same information is requested where the above-mentioned persons own individually or collectively over 25 per cent of the stock of any corporation to which a refund is made and/or where the stock of the corporation is held to the extent of 25 per cent or more by a trust, holding corporation, or other agency which is in turn controlled by the persons indicated.

EXHIBIT 2

Five largest refunds and credits under section 710, revenue act 1928

(To December 1, 1928)

Name and address	Credit	Refund	Total credited and refunded	Interest
W. R. Grace & Co., New York City	$234,982.53	$2,373,297.54	$2,608,280.07 3,745,479.38	$1,137,199.31
Kolb, Louis J., et al., Philadelphia, Pa	1,580,573.50		1,580,573.50	None.
New York Life Insurance Co., New York City		2,394,615.47	2,394,615.47 2,634,700.15	240,084.68
Prudential Insurance Co. of America, Newark, N. J		1,503,219.02	1,503,219.02	130,402.60
Standard Oil Co. of Kentucky, Louisville, Ky		1,842,055.42	1,842,055.42 2,614,554.54	772,497.12

PARTIAL REPORT NO. 2 OF DIVISION OF INVESTIGATION ON REFUNDS, CREDITS, AND ABATEMENTS, FEBRUARY 28 TO NOVEMBER 1, 1927

FOREWORD

The urgent deficiency bill (H. R. 16462) approved February 28, 1927, appropriated $175,000,000 for refunding taxes illegally collected, but also provided "That no part of this appropriation shall be available for paying any claims in excess of $75,000 until after the expiration of 60 days from the date upon which a report giving the name of the person to whom the refund is to be made, the amount of the refund, and a summary of the facts and the decision of the Commissioner of Internal Revenue is submitted to the Joint Committee on Internal Revenue Taxation."

The above-quoted law evidently confers no power on the joint committee to formally disapprove refunds, nor, in fact, does it definitely require any positive action by the committee. However, the law does seem to imply that the joint committee will review refunds in excess of $75,000 in order that the Congress may be informed both generally and specifically as to the manner in which the millions of dollars appropriated are expended. It has also seemed proper to bring any doubtful points which developed to the attention of the Treasury Department within the 60-day limit provided in the law.

In conformity with instructions from the chairman of the joint committee, the division of investigation has been charged with the duties of reviewing the overassessments in excess of $75,000 along the lines briefly described in the preceding paragraph. The present report deals with all such overassessments reported by the Commissioner of Internal Revenue to the joint committee from February 28, 1927, to November 1, 1927. Refunds are still being reported and reviewed. November 1 has no significance other than being a convenient date for the purposes of this report.

SYNOPSIS OF GENERAL SURVEY

(For the period February 28, 1927, to November 1, 1927)

1. The total number of cases reported where claims have been allowed in excess of $75,000 amounts to 323.

2. The figures involved in these overassessments are as follows:

Total refunds	$32,627,518.82
Total credits	11,167,099.95
Total abatements	12,032,743.90
Total overassessment	55,827,362.67
Total interest allowed	12,246,811.99
Grand total of allowances	68,074,174.66

3. The amount of the above allowances payable from the appropriation of $175,000,000 is the amount of refunds plus the interest allowed, or the sum of $44,874,330.81.

4. Information from the Treasury Department is to the effect that approximately $122,000,000 of the appropriation had been scheduled for payment up to November 1, 1927. It results from these figures that—

(a) Thirty-seven per cent of the total of the cash refunds is allowed in cases where the refund is in excess of $75,000.

(b) Thirty per cent of the total appropriation was still unencumbered on November 1, 1927.

5. This is the first year since 1921 in which there has been an unencumbered balance in the refund appropriation on November 1. It can be predicted with reasonable certainty that the peak of refundments of tax has been passed.

6. An analysis has been made of the overassessments in excess of $75,000, which shows that the principal reasons for such overassessments are due to the application of provisions in the revenue acts found only in the excess-profits tax years ending with 1921. The percentage of overassessments, due to only three of these provisions in the excess-profits tax years, to the total of all overassessments examined, is shown below:

	Per cent
Special assessment ($13,823,254)	24.76
Invested capital ($8,986,219)	16.10
Amortization ($1,996,875)	3.58
Total ($24,806,348)	44.44

7. Analysis shows that the principal reasons for overassessments due to the application of provisions found in the revenue act of 1926 as well as in prior acts, are as follows:

	Per cent
Estate tax ($5,013,063)	8.98
Affiliation ($4,961,352)	8.89
Depreciation ($4,413,366)	7.91
Inventory adjustments ($4,371,547)	7.83
Valuations ($1,481,765)	2.65
Depletion ($1,410,840)	2.53

8. The facts shown in (6) and (7) above make it apparent that the special assessment and invested capital provisions of the revenue acts of 1921 and prior years are the most troublesome provisions ever written into our revenue acts and are still the cause in 1927 of over 40 per cent of all refunds, credits, and abatements. It is also apparent

that the most troublesome provisions in the present revenue act are those necessitating (1) the valuation of estates, (2) the consolidation of returns for affiliated companies, (3) the determination of depreciation and depletion, (4) the valuation of inventories, and (5) valuations for determining gain and loss. It is evident that the future simplification of the revenue act in the larger cases must of necessity rest largely on a more simple or definite method of determining valuations and other questions of judgment.

9. Overassessments for the years prior to 1922 represent 89 per cent of the total overassessments, leaving but 11 per cent of such overassessments allowed for 1922 and subsequent years.

10. When all tax cases prior to 1922 have been settled, refunds, credits, and abatements should be insignificant when compared with the present amount of these allowances.

SYNOPSIS OF INDIVIDUAL CASES

(For the period February 28, 1927, to November 1, 1927)

All overassessments in excess of $75,000 allowed by the commissioner from February 28, 1927, to November 1, 1927, have been reviewed. As previously stated these cases number 323. The results of this review are summarized as follows:

1. Taken as a whole the overassessments submitted by the commissioner to the joint committee show careful, legal, and just handling in the face of many difficult problems.

2. The review of the overassessments is instructive as to the operation and effect of our revenue acts and as to certain inequitable results permitted under such acts.

3. Two hundred and ninety-six cases, or 92 per cent, have been clearly proper and allowable on the basis of the facts shown in the report of the commissioner to the joint committee.

4. Twenty-seven cases, or 8 per cent, have been doubtful on the report of the commissioner and have been specially investigated through the files of the Bureau of Internal Revenue or upon special inquiry addressed to the authorized representative of the Treasury Department.

5. In regard to the 27 doubtful cases, after special investigation, the following classification can be made:

Sixteen cases were found proper.

Nine cases were not computed in accordance with the views of the staff of the committee, but nevertheless were not clearly illegal or outside the discretionary authority vested in the commissioner by the revenue acts.

One case appeared not to be in accordance with current board decisions and was promptly withdrawn for review by the general counsel's office when attention was drawn to this fact by the committee's representative.

One case is awaiting information from the bureau on certain doubtful points.

CONCLUSIONS

From the review of overassessments made it is concluded that—

1. The provisions of the revenue act requiring the use of personal or expert judgment are responsible for many refund cases.

2. The special assessment and invested capital provisions have been exceedingly difficult of administration.

3. The study of the individual cases is valuable as showing the practical operation and effect of our revenue acts and the desirability of simplification.

GENERAL SURVEY OF REFUNDS, CREDITS, ABATEMENTS, AND INTEREST STATISTICS

In making a general survey of all overassessments submitted to the joint committee by the Commissioner of Internal Revenue for the period from February 28 to November 1, 1927, it is first necessary to present the statistics covering these cases. Accordingly, the following figures are presented:

Overassessment cases for the 8-months' period from February 28 to November 1, 1927

TOTAL CASES, 323—MONTHLY AVERAGE, 40

Original assessment		$227,542,267.21
Total tax collected	$160,431,699.29	
Previous allowances	11,283,205.25	
		171,714,904.54
Overassessments		55,827,362.67
Composed of:		
Refunds	$32,627,518.82	
Credits	11,167,099.95	
Abatements	12,032,743.90	
		55,827,362.67
Interest paid on overassessments		12,246,811.99
Total of overassessments and interest		68,074,174.66

Reduction in original tax by overassessments reported, 24.53 per cent.
Average percentage of interest paid on overassessments, 21.93 per cent,

Classification of overassessments in re principal cause

Principal cause	Cases	Overassessment	Interest cost	Total overassessment and interest	Per cent of overassessment to total overassessments
Special assessment	42	$13,823,253.78	$3,479,384.78	$17,302,638.56	24.76
Invested capital	15	8,986,218.63	1,317,613.14	10,303,831.77	16.10
Estate tax	18	5,013,062.99	611,675.37	5,624,738.36	8.98
Affiliation	30	4,961,352.14	1,006,390.57	5,967,742.71	8.89
Depreciation	21	4,413,366.42	879,745.95	5,293,112.37	7.91
Inventory adjustments	22	4,371,547.43	950,785.23	5,322,332.66	7.83
Amortization	13	1,996,875.45	584,163.37	2,581,038.82	3.58
Valuations	10	1,481,765.32	266,584.13	1,748,349.45	2.65
Depletion	6	1,410,839.98	454,562.87	1,865,402.85	2.53
Miscellaneous court judgments	4	789,009.93	210,115.30	999,125.23	1.41
Transfer tax	4	780,470.25	270,633.41	1,051,103.66	1.40
Capital stock tax adjustments	3	390,163.39	85,426.05	475,589.44	.70
Gift tax	2	311,235.00	None.	311,235.00	.56
Foreign tax	2	213,562.83	20,426.30	233,989.13	.38
Miscellaneous	53	6,884,639.13	1,311,077.04	8,195,716.17	12.32
Interest recomputations	78		798,228.48	798,228.48	
Grand total	323	55,827,362.67	12,246,811.99	68,074,174.66	100

DISCUSSION

From a consideration of the statistics shown above, and the data in the files of the joint committee, a number of facts can be deducted with reasonable accuracy.

The total number of cases reported in the eight months' period, February 28 to November 1, 1927, has amounted to 323. This represents a monthly average of 40 cases showing an overassessment in excess of $75,000 each. The average overassessment per case amounts to $172,837.03, and the average interest per case amounts to $37,915.83 additional.

While the portion of the overassessments which are payable from the $175,000,000 appropriation consists only of the refunds of $32,627,518.82 plus the interest of $12,246,811.99 or a total of $44,874,330.81, it should be noted that the credits against taxes due amounting to $11,167,099.95 plus the abatements of tax assessed amounting to $12,743.90 or a total of $23,199,843.85, also have a direct effect on the revenue.

Information from the Treasury Department shows that approximately $122,000,000 had been scheduled for payment out of the appropriation up to November 1, 1927. This leaves an unincumbered balance in the appropriation amounting to $53,000,000, or 30 per cent as of the same date. It is also apparent that about 37 per cent of the total of cash refunds and interest can be attributed to cases in excess of $75,000.

A study of the present refunds and the figures of past years would indicate that the peak of refunds has been passed. This is the first year since 1921 in which there has been an unencumbered balance in the refund appropriation on November 1.

Attention is now directed to the "Classification of overassessments in re principal cause," shown on page 6. This table is believed to be very important for the purpose of showing what provisions of the law have been largely responsible for the large refunds already set forth.

At the top of the list stands the special assessment provisions (sec. 210 of the 1917 act, and secs. 327 and 328 of the 1918 and 1919 acts). While these provisions have not been in effect since 1921, they are still the cause of practically one-fourth of all overassessments of tax made in the current year. It appears that the special assessment provisions are perhaps the most difficult sections ever written into the revenue acts from the standpoint of equitable administration. The failure of the Bureau of Internal Revenue to publish definite rules, regulations, and restrictions at the outset has, in our opinion, contributed to increase the past and present difficulties with these provisions. A few scattered decisions and rulings have been published by the bureau and the Board of Tax Appeals and it is believed that the board will eventually formulate a fairly definite policy on this matter. Special assessment will be discussed in detail in connection with certain individual cases presented later.

Next to special assessment comes invested capital, another provision of the revenue act not in effect after 1921. The computation of this item is the principal cause in the allowance of some $10,303,000 in overassessments out of a total of $55,827,000, or 16 per cent. A few of the principal difficulties encountered in the determination of invested capital gives an insight into the complications involved in the application of this section of the Federal income tax laws. Under this section it is necessary to determine the actual cash value of property donated by stockholders, the cash value of tangible and intangible prop-

erty paid in for stock, the correct amount of depreciation sustained to date of application of the tax laws involving invested capital, and the correct amount of surplus earned for prior years. In addition to the above numerous technical and legal difficulties arise.

Overassessments in the inheritance or estate-tax cases account for 8.98 per cent of the total overassessments reported. An analysis of these cases indicates that the refunds under this section are partly due to the retroactive feature of the 1926 act in regard to reduction of rates. This cause, while standing for this year in third place in importance, will undoubtedly be in a position of less importance in future years. However, the valuation of estates will always present real difficulty under present methods of appraisal.

The fourth important cause of overassessments lies in the application of the consolidated returns provision (sec. 240). This provision, which permits affiliation of companies, is in effect under the revenue act of 1926. Inasmuch as this matter has been fully discussed in a report already submitted to the joint committee and as the House bill as reported by the Ways and Means Committee contains the remedy for this situation, it will not be further commented on here.

The determination of depreciation allowances is the fifth major cause of overassessments. The principal difficulties encountered in these determinations are March 1, 1913, valuations and rates of depreciation. A study is being carried out by the Treasury Department for the purpose of publishing certain authorized rates of depreciation for the various industries. This program has been considered by this division and has its hearty support. A solution to the troublesome question of March 1, 1913, valuations has not yet been found.

Inventory adjustments accounts for some 7.83 per cent of the total overassessments. Here the principal trouble is again an appraisal question, that of the market value of the inventory at a certain date.

Amortization, valuations for determining gain or loss, and depletion account, respectively, for 3.58 per cent, 2.65 per cent, and 2.53 per cent of the total overassessments. All of these questions involve valuations based on judgment.

It must be apparent from the above that, as far as the present revenue act is concerned, the most troublesome questions are found in connection with valuations and matter requiring the use of judgment.

A very large part of current overassessments are, however, made on account of taxes in the excess-profits tax years prior to 1921. In fact, 89 per cent of all the overassessments reported to this committee apply to taxable years prior to 1922. It should certainly follow that refunds should be very much less after the final closing out of the tax returns for the above-mentioned period.

INDIVIDUAL CASES

A comprehensive idea of the situation in regard to refunds, credits, and abatements can not be secured without a brief description of certain individual cases. Accordingly a brief description of the principal points involved in certain interesting cases will be given. These descriptions are all based on actual cases submitted to the joint committee by the Commissioner of Internal Revenue. As some of these cases concern nationally known taxpayers, it has been thought wise to substitute fictitious names for the real names, so that the facts can be studied without bias or prejudice. In every case, therefore, whether in the discussion or in quoted exhibits, the real name of the taxpayer has been changed to a code name.

This report will frankly criticize certain features in some of the individual cases, but it is hoped that the reader will keep in mind that there are two sides to most of these questions and that there are many border-line cases where it is impossible to justly determine all the doubtful points in favor of the taxpayer or in favor of the Government. Taken as a whole, the overassessments submitted by the commissioner are obviously proper on the basis of the facts shown.

A careful review has been made of all the 323 cases submitted up to November 1, 1927, and of these only 27 cases, or 8 per cent, have appeared sufficiently doubtful to require special investigation in the files of the bureau. Over one-half of these 27 cases appeared proper after intensive study.

There remains only 11 doubtful cases, which can be classified as follows:

Nine cases are not computed in accordance with the views of this division, but, nevertheless, they are not clearly illegal or outside the discretionary authority vested in the commissioner by the revenue acts.

One case appears not to be in accordance with current Board of Tax Appeals decisions and was promptly withdrawn for review by the general counsel's office when attention was drawn to this fact by the committee's representative.

One case is awaiting information from the bureau on doubtful points of fact.

The description and discussion of certain individual cases will now be presented:

Case No. 1

Code name: John Doe & Co. (Inc).

Figures involved:

Total original and additional assessment	$142,558.71
Final tax determined	26,297.88
Overassessment	116,260.83
Refunded	116,260.83
Interest allowed	38,148.52

Subject: Interest.

DISCUSSION

The recommendation of the General Counsel of the Bureau of Internal Revenue in this case will be found in Exhibit 1a attached.

From an examination of this recommendation and other data it appears that John Doe was the principal stockholder in John Doe & Co. (Inc.). This company erroneously included in its income the sum of approximately $226,408 for the fiscal year ending June 30, 1920, which should have been returned by Mr. Doe as an individual. This change in the allocation of income requires a refund to the corporation and the assessment of additional tax on the individual. There is also an inventory adjustment in favor of the corporation in the amount of $111,926.

The refund to the corporation amounts to $116,260.83. It may be roughly computed, on account of the two major adjustments noted, that about two-thirds, or $73,000, of the total refund is due to the allocation of income to the individual. The additional tax proposed against Mr. Doe amounts to $70,381, so that the net result to the Government is unimportant.

The action of the commissioner in this case appears strictly in accordance with the law. It is desired, however, to point out the disadvantage suffered by the Government in adjustments of this character.

Due to the mere reallocation of income from the corporation to the individual owner of same, the Government takes a heavy loss on account of the interest provisions of the revenue acts. The corporation receives interest from the time of filing its return in 1920; the taxpayer will pay interest on account of the additional assessment only from October 26, 1926. The advantage to the taxpayer is approximately $22,000 in interest.

The facts in regard to this situation are clearly stated in the letter of the Secretary of the Treasury to the chairman of this committee, quoted in full below:

APRIL 29, 1927.

Hon. W. R. GREEN,

Chairman Joint Committee on Internal Revenue Taxation.

Attention: Mr. L. H. Parker, Chief, Division of Investigation, room 321–A, House Office Building.

SIR: Reference is made to your letter dated April 30, 1927, in which you request that you be informed as to the amount of additional assessment made against Mr. John Doe on account of the reallocation of income returned by and taxed to John Doe & Co. (Inc.) for the year 1920 to Mr. John Doe, which reallocation of income resulted in a refund of $116,260.83 to the corporation. There is to be paid on this refund an amount of interest in the total sum of $38,148.52.

On account of this change, tax has been proposed against Mr. John Doe in the sum of $70,381.71. This tax results to Mr. Doe as a consequence of the reallocation of the income to his account.

The taxpayer has filed a petition with the United States Board of Tax Appeals on the basis of what appear to be immaterial issues, and the tax has not yet been assessed. When the United States Board of Tax Appeals renders its decision the proper tax will be assessed and interest computed from February 26, 1926, to the date of assessment.

Respectfully,

A. W. MELLON,
Secretary of the Treasury.

CONCLUSION

It is the opinion of this division that the refund allowed in case No. 1 is correct on the basis of the facts submitted. It is thought proper to bring out the inequity of the Government as to interest payments resulting in such cases from our present statutes.

Case No. 2

Code name: Roe & Roe (a partnership).

Figures involved: Additional interest allowance on prior credit, $12,697.61.

Subject: Interest.

DISCUSSION

The recommendation of the general counsel in this case is shown in Exhibit 2b, attached.

It appears that there was a certificate of overassessment issued to the partnership, Roe & Roe, for the taxable year 1917 in the amount of $60,014.96. Of this amount a certain portion was refunded to the partnership and a small amount abated. The balance, which amounted

to $28,476.84, was credited against the additional tax due from the partners, John Roe and James Roe, with their consent.

On the refund interest was paid from April 1, 1918, the date of overpayment, to December 3, 1925, the date of allowance of refund. There is no controversy about this interest on the amount refunded.

On the credit interest was originally paid from April 1, 1918, the date of overpayment, to June 15, 1918, the due date of the amount against which credit was taken. The taxpayer contended that this interest period was erroneous and that interest should be paid from April 1, 1918, the date of overpayment, to December 3, 1925, the date of allowance of the credit.

As the unit did not agree with the taxpayer's contention the taxpayer filed suit in the United States Court of Claims for payment of interest for the period stated.

The Attorney General, at the request of the general counsel, settled this case out of court by admitting liability for interest on the amounts credited the partners for the period April 1, 1918, to December 3, 1925, as claimed by the taxpayer.

The action taken in this case appears to be proper and in conformity with the law. It appears, however, that neither before nor after this action has the Bureau of Internal Revenue followed the precedent established. This is shown by the letter of the Treasury Department quoted in full below:

OCTOBER 12, 1927.

Mr. L. H. PARKER,
Chief Division of Investigation,
Joint Committee on Internal Revenue Taxation,
Room 321 A, House Office Building, City.

DEAR MR. PARKER: Reference is made to your letter of September 30, 1927, relative to the proposed payment of interest to Roe & Roe, as shown on schedule 2, in which you suggest that Mr. Sherwood's attention be drawn to the memorandum of the general counsel in this case and that you be informed whether this decision of the general counsel is being followed by his division.

You are advised that an agreement was reached between the taxpayer and the Attorney General in this case, as a result of which the taxpayer filed with the Attorney General in escrow a motion to dismiss its suit for interest in the United States Court of Claims. The Income Tax Unit was directed to reopen and allow the claim for interest. The memorandum of the general counsel in this case has not been adopted as a general policy.

Very truly yours, E. C. ALVORD,
Special Assistant to the Secretary of the Treasury.

It is not clear to this division why a policy which admittedly can not be sustained by legal action should be continued in force. The result of such procedure is to deny all taxpayers their statutory rights except those who file suit.

CONCLUSION

It appears that case No. 2 has been settled properly on the basis of the facts submitted. The question is raised, however, as to why the case should not be followed as a precedent for all taxpayers whose cases involve the same principle.

Case No. 3

Code name: The "A" Iron Products Co.

Figures involved:

Total of original assessment	$1,136,598.53
Final tax as now determined	1,074,175.29
Overassessment allowed	62,423.24
Amount refunded	62,423.24
Interest paid	17,975.33
Total allowance	80,398.57

Subject: Special assessment.

DISCUSSION

The recommendation of the general counsel to the commissioner in regard to this case will be found in Exhibit 3 of the appendix.

The "A" Iron Products Co. is by far the largest manufacturer of certain iron products in the United States. The company filed its original return for 1920, admitting a tax liability of $1,136,598.53. After a field examination, an additional tax liability of $37,992.52 was disclosed, but was not assessed, as the taxpayer filed a claim for special assessment for the year 1920 under the provisions of sections 327 and 328 of the revenue act of 1918. This claim was allowed and a refund of $62,423.24 resulted.

The refund in this case is due entirely to the application of the special assessment provisions above mentioned. The reason given for special assessment is that there has been "an understatement of assets" on the books of the taxpayer "due to the fact that large sums expended on additions, replacements, and other capital items were charged to expense in prior years."

It appears that this is a proper ground for special assessment when properly substantiated, and when it is not possible to actually restore such items to capital. It would appear more proper, however, in cases where the items could be identified to restore them to capital rather than to allow special assessment. Such facts can only be secured by the examination of the taxpayers' books, and this division therefore accepts the facts as stated in the general counsel's memorandum. It is certain that this ground for granting special assessment should be handled carefully for almost any company which has kept its books on a conservative basis can prove that many items should have been capitalized. For instance, it is believed the United States Steel Corporation could prove this fact.

Having admitted that special assessment is allowable, the bureau is next confronted with the problem of selecting proper comparatives. Inasmuch as the "A" Iron Products Co. is the largest company in this line of business, it has been impossible for the Income Tax Unit to follow its usual practice and select comparatives of the same size.

The following data from the files of the bureau shows the gross sales, net income, and percentage of profits tax to net income for the appellant company and the comparatives finally selected.

Extract from comparative data sheet

	Gross sales	Net income	Per cent profit tax to net income
Appellant	$12,444,841	$3,213,796	30.30
Comparative No. 1	2,008,030	425,629	21.70
Comparative No. 2	1,119,635	367,229	30.95
Comparative No. 3	936,160	176,236	26.19
Comparative No. 4	1,140,965	244,487	21.41
Comparative No. 5	1,711,404	291,237	26.79
Comparative No. 6	1,067,425	232,857	28.15
Average	1,330,603	289,613	25.79

Final profits tax, appellant	$836,733.45
Per cent of final tax to net income, appellant	26.04
Constructed invested capital, appellant	8,003,302.89

The above statistics show that the gross sales or net income of all six comparatives added together does not equal respectively the gross sales or net income of the appellant company. The comparatives chosen are therefore individually grossly disproportionate in size to the taxpayer company. The law, however, does not seem to specifically require the use of the same size companies as comparatives. This point, however, should be noted, as we shall see in a later case that the bureau insists on comparatives of the same size.

One of the practical points which stands out in this case is that special assessment is granted to a company which is by far the largest producer in its particular line. It is not apparent the Congress intended to give this relief to these large companies. If the principles established in this case are correct there seems to be no doubt that the United States Steel Corporation could be allowed special assessment, for this corporation was in the 80 per cent bracket in 1918 and had kept its books on a very conservative basis in regard to capitalization.

There are two other points which should be noted in this case:

In the first place, the reduction in tax through special assessment is about 9 per cent. It is not certain from the published regulations of the commissioner that this constitutes a "gross disproportion between the tax computed without benefit of this section and the tax computed by reference to representative corporations" as required by section 327 of the revenue act of 1918.

In the second place, the taxpayer had the benefit of substantial deductions for amortization and depletion. None of the comparative companies had these deductions showing that they were not "similarly circumstanced" in regard to their business. Amortization indicates the taxpayer had war contracts or contracts contributing to the prosecution of the war; depletion shows the taxpayer owned or operated mines.

CONCLUSION

This case is one of those not computed in accordance with the views of this division, but on the other hand it is admitted that there is nothing illegal in the determination made. It is admitted, also, that in the absence of definite rules, the specific application of the special assessment provision is largely discretionary with the commissioner.

Case No. 4

Code name: The "X" Tobacco Co.

Figures involved:

Total of original and additional assessments (1918 to 1921, inclusive)	$24,475,876.63
Previously refunded or credited	1,698,265.47
Balance	22,777,611.16
Final tax liability as determined	15,149,597.91
Overassessment allowed	7,628,013.25
Refunded	4,072,685.83
Credited	3,555,327.42
Overassessment	7,628,013.25
Interest	2,141,122.18
Total allowance	9,769,135.43

Subject: Special assessment.

DISCUSSION

On August 9, 1927, the following quoted letter was transmitted to the authorized representative of the Treasury Department. This letter sets forth the opinion of this division after a review of the case and is sufficient for the purposes of this report. It should be noted that actual names have been omitted in all cases and code numbers or letters substituted therefor.

AUGUST 9, 1927.

Mr. E. C. ALVORD,
Special Assistant to the Secretary of the Treasury,
Washington, D. C.

Subject: Refund—"X" Tobacco Co.

MY DEAR MR. ALVORD: The Commissioner of Internal Revenue, on June 27, 1927, submitted to the chairman of this committee the facts in connection with the refund proposed to the "X" Tobacco Co., in accordance with H. R. 16462, requiring such report.

As per my general instructions covering all such cases I have made an investigation of the principal points at issue in this case, and not being in agreement with the findings of the bureau, the matter is referred to you with a request for a conference on this case on August 18 at 1.30 p. m., with such officers of the department as you may designate.

The figures involved in this case are as follows, covering the years 1918 to 1921, inclusive:

Total original and additional assessments	$24,475,876.63
Previously refunded and credited	1,698,265.47
Balance	22,777,611.16
Tax liability now determined	15,149,597.91
Overassessment proposed	7,628,013.25

Of this overassessment now proposed $4,072,685.83 is to be refunded and $3,555,327.42 is to be credited against 1923 taxes; in addition to this refund and credit, there will be due the taxpayer on this adjustment an interest payment of $2,141,122.18.

The determination of the final tax liability in this case has been arrived at by the application of the "special assessment provisions" sections 327 and 328 of the revenue acts of 1918 and 1921. The method employed is fully outlined in the recommendation of the general counsel to the Commissioner of Internal Revenue dated June 7, 1927, a copy of which is attached to this report. (See Exhibit A.")

The points in this case with which we take issue are as follows:

1. The holding that an abnormality exists in invested capital from the failure of the taxpayer to capitalize advertising expenses when at the same time it is held that "a satisfactory rule or formula" for capitalizing such expenses "has never been devised."

2. The determination of tax liability by "special assessment" by the use of only one comparative company.

3. The holding that legislative history is the controlling factor in granting special assessment in this case.

1. ABNORMALITY CLAIMED IN INVESTED CAPITAL

The general counsel sets forth in his memorandum (Exhibit "A") the total advertising and allied expenditures of the "X" Tobacco Co. from 1899 to 1921, which can be summarized as follows:

	Total advertising expenditures
1899 to 1911, inclusive	$7,062,542.51
1912 to 1917, inclusive	8,179,684.69
1918 to 1921, inclusive	22,060,884.79
Grand total	37,303,111.99

The general counsel states that "if a cause for special assessment exists it is (1) because the taxpayer employed in its business during the years under consideration valuable income-producing intangible assets which had been acquired through large expenditures in advertising but which are excluded from invested capital computed under section 326 of the revenue act of 1918, and (2) because of the legislative history of this particular case."

In our opinion there is nothing in section 326 which prohibits the capitalization of advertising expenses and its inclusion in paid-in surplus and in invested capital. However, the general counsel says that "a satisfactory rule or formula for obtaining the amount (of such expenditures) which should be apportioned to capital and the amount which should be apportioned to profit and loss has never been devised."

If this is the case, how can there be an abnormality in the invested capital of the "X" Tobacco Co. as required by section 327, through the failure to capitalize advertising expenses when there is no method in existence for this or any other company to capitalize such expenses? Noncapitalization of advertising expense must be the normal not the abnormal method of handling advertising expenditures.

Even if we grant that there is an abnormality on account of these advertising expenses, the relief afforded far exceeds what could be obtained under any method of capitalization of the advertising expenditures.

Suppose we allow advertising expenditures to be capitalized in full for all years, then the result would be approximately as follows:

Year	Approximate invested capital. All advertising capitalized	Statutory invested capital	Constructive invested capital as determined by special assessment
1918	$67,373,601	$52,131,384	$121,194,911
1919	61,022,116	65,215,929	144,437,216
1920	101,091,270	79,233,744	133,708,188
1921	109,965,289	81,406,904	169,999,324

From the above it can be seen that even if all advertising expenses were capitalized, the resulting invested capital would fall far short of that in fact allowed by the bureau under the special assessment provision. Not only that for the years 1918 to 1921 the taxpayers' income would be increased by the amount of such capitalized items, or the sum of $22,060,884.99.

It can readily be seen, therefore, that the taxpayer instead of suffering "an exceptional hardship" by the noncapitalization of such items as required by section 327, has in fact secured an advantage through the deduction of the items in full as an expense.

This method of allowing special assessment on account of an abnormality in not capitalizing expenditures, which expenditures are charged off in full as an expense for the taxable years in question, amounts to allowing such items both as an increase in capital and at the same time as a complete charge off from income. This method can not be approved of, and this case, if typical of the method employed by the special assessment section, becomes of general importance. To give the taxpayer this double advantage is obviously at variance with the whole intent of the law.

Probably the best method for the taxpayer would be to capitalize all advertising expenses up to January 1, 1918, and after that date charge same to expense. This method gives the following comparative results:

Year	Approximate invested capital. Advertising up to 1918 capitalized	Statutory invested capital	Constructive invested capital as determined by special assessment
1918	$67,373,607	$52,131,384	$121,194,911
1919	80,458,156	65,215,929	144,437,216
1920	94,475,971	79,233,744	133,708,188
1921	96,649,131	81,406,904	169,999,324

It will be seen from the above that even under this method, most advantageous to the taxpayer, the invested capital falls far below that determined under special assessment by the bureau.

It is our position that in any event the constructive invested capital determined under special assessment should not exceed the figures shown in column 1 of the above table, as such figures give effect to the full extent of the abnormality.

2. USE OF ONE COMPARATIVE

Section 328 provides that the tax determined under special assessment shall bear "the same ratio to the net income of the taxpayer for the taxable year, as the average tax of representative corporations engaged in a like or similar trade or business bears to their average net income."

Reference to any standard dictionary will show that it is impossible to obtain an average by the use of only one comparative company. This method appears at least technically illegal.

As we understand the position of the bureau, they adopt this method because there is only one company which they consider a proper comparative.

In the case of the refund recently allowed the "A" Iron Products Co. six comparatives were selected, all of whose net income added together did not equal the net income of the appellant company.

It is evident, therefore, that the same size of company is not required by the rules of the special-assessment section.

Data secured sometime ago from the special assessment section shows that there are many small tobacco companies who paid a higher excess-profits tax rate than is now found for the "X" Tobacco Co.

A summary of these comparatives follows:

1918

Name	Net income	Profits tax	Per cent profits tax to net income
Company No. 1	$29,531	$12,725	43.09
Company No. 2	245,293	101,659	41.44
Company No. 3	286,877	126,357	44.04
Company No. 4	188,774	64,474	34.15
Company No. 5	66,102	41,981	63.50
Company No. 6	39,344	14,938	37.96
Company No. 7	44,096	21,659	49.11

1918—Continued

Name	Net income	Profits tax	Per cent profits tax to net income
Company No. 8	$91,384	$32,278	35.32
Company No. 9	511,492	194,409	36.00
Company No. 10	39,114	19,327	49.92
Company No. 11	68,328	24,307	35.57
Company No. 12	60,053	22,149	36.88
Company No. 13	33,424	15,285	45.73
Company No. 14	61,069	27,614	45.21
Company No. 15	583,082	263,569	45.20
Total	2,347,953	982,931	41.86
1919			
Company No. 16	$28,548	$5,968	20.90
Company No. 17	43,528	6,499	14.93
Company No. 18	73,752	15,412	20.89
Company No. 19	78,759	11,376	14.44
Company No. 20	23,890	1,807	6.97
Company No. 21	54,477	9,941	18.24
Company No. 22	88,180	8,605	9.73
Company No. 23	98,896	8,168	8.25
Company No. 24	109,201	13,190	12.07
Company No. 25	294,610	51,301	17.48
Total	895,643	132,467	14.78
1920			
Company No. 26	$9,418	$692	7.34
Company No. 27	28,108	2,260	8.04
Company No. 28	117,012	14,936	12.76
Company No. 29	652,838	82,957	12.70
Company No. 30	34,189	3,192	9.33
Company No. 31	21,126	1,769	8.37
Company No. 32	32,765	5,137	15.67
Total	895,456	110,943	12.38

Of course, it can not be contended that all of the above comparatives are similarly circumstanced with the "X" Tobacco Co., the fact does remain that they are more or less in competition with it. A comparison of the average rates paid by these comparative companies against the rates now proposed for the "X" Tobacco Co. is as follows:

Year	Statutory rate "X" Tobacco Co.	Rate now allowed by bureau	Average rate shown by our comparatives
	Per cent	*Per cent*	*Per cent*
1918	50.37	26.09	41.86
1919	18.1	6.16	14.78
1920	11	4.67	12.38

There can be no doubt, therefore, that the "X" Tobacco Co. will under the proposed rates pay less than one-half of the profits-tax rate that many of its small competitors have been obliged to pay.

It would appear that if the bureau can disregard the size of comparatives in the case of the "A" Iron Products Co., that they could employ the same method in this case and use smaller comparatives.

Why a relief provision like special assessment should find a higher rate of tax for small companies than for large is not clear and does not seem to come within the intent of the Congress as expressed by the statute.

It is understood that rates have been determined under special assessment as follows for certain small tobacco companies:

APPELLANT COMPANY

1918

	Per cent
No. 1 Tobaccco Co. allowed profits-tax rate of	31.5
No. 2 Tobacco Co. allowed profits-tax rate of	38.03
No. 3 Tobacco Co. denied relief on rate of	40.96

1919

No. 4 Tobacco Co. allowed rate of	8.75
No. 5 Tobacco Co. denied relief on rate of	18.90

The memorandum of the general counsel goes into considerable detail as to the three other companies besides the "X" Tobacco Co., which dominate the tobacco business, namely:

The "M" Tobacco Co.

The "R" Tobacco Co.

The "S" Tobacco Co.

We have made a study of the statistics on those companies as published in Moody's Analysis of Industrials, which is interesting but too voluminous for reproduction here.

It might be mentioned, however, that if the "S" Tobacco Co. is granted special assessment on the argument advanced in this case they will of necessity also be compared with one company, the "R" Tobacco Co.

Now, the ground for special assessment in the "S" Tobacco Co. case is an excessive amount of borrowed capital. Yet the "R" Tobacco Co. appears to have a greater proportionate amount of borrowed capital than the "S" Tobacco Co. What will be done in such a situation is hard to see unless small comparatives are resorted to.

In regard to the "M" Tobacco Co. it is evident that the capital requirements of this company are quite different from the "X" Tobacco Co. The "M" Tobacco Co. manufactures large quantities of cigars and controls domestic and foreign subsidiaries which doubtless require more capital on the part of the parent company.

It might also be noted that all of the Big Four companies except the "X" Tobacco Co. have a large amount of bonded indebtedness showing an entirely different situation as to the capital necessary.

3. LEGISLATIVE HISTORY

It appears that the legislative history of this particular case is the controlling factor in allowing special assessment.

In other words, unless this company had been mentioned in the Finance Committee of the Senate as a typical case where special assessment was necessary, then this case would not have been allowed.

This means either that the bureau has failed to interpret this section of the act as intended by the Congress or that the act does not express the intent.

The fact remains that in this case, no other company similarly circumstanced with the "X" Tobacco Co. could get special assessment unless it too had been mentioned in a committee of the Congress or in that body itself.

We can not believe that the Congress intended to disregard in this way the fundamental principle underlying the excess-profits tax; namely, the taxation at special rates, of the profit accruing to corporations in excess of 8 per cent of its actual paid-in capital and paid-in surplus.

The fact remains that the other three of the "Big Four" tobacco companies had on the books large amounts of good will paid in for cash. These stockholders were entitled to their 8 per cent dividends before the payment of an excess-profits tax.

In the case of the "X" Tobacco Co., no such good will was paid for in cash, and it results that the stockholders could still get their 8 per cent dividend before being affected by the excess-profits tax.

We do not believe that the Congress in enacting sections 327 and 328 had in mind passing on the merits of all the facts in the "X" Tobacco Co. case, nor to hold the bureau to granting special assessment to this company, if they could not grant a similar relief to companies similarly situated which had not been mentioned by Members of the Congress.

When the 1918 revenue act first passed the Senate it included among the cases entitled to special assessment those which suffered a hardship "because of the time or manner of organization, or because the actual value of the assets on March 1, 1913, was substantially in excess of the amount at which such assets would be valued for the purpose of computing invested capital * * *."

This language was not in the House bill and was stricken out in conference. The general counsel's memorandum fails to show that the discussion in the Finance Committee was on the final revenue act as passed by both Houses, or merely in the act as first passed by the Senate.

The "X" Tobacco Co. case is clearly one where the time and manner of organization is substantially different from the other members of the "Big Four" group. But this ground for special assessment was clearly eliminated in the final bill as passed by both Houses.

A discussion of the above points is requested in conference, in order that this committee may fulfill the obligation laid on it by H. R. 16462, the urgent deficiency bill.

Very truly yours,

L. H. PARKER,
Chief Division of Investigation.

Following the above letter, conference was had with the party designated by the Treasury Department and the various issues raised were discussed. Information was given that the use of one comparative had been found legal after investigation by the general counsel's office. The representative of the Treasury Department took the position that the determination was the most favorable to be had in view of the peculiar circumstances of the case.

This division concluded that its duty had been performed by calling the main issues to the attention of the department.

CONCLUSION

This case is one where, in the opinion of this division, special assessment should not have been allowed. It is conceded, however, that it was within the discretionary power of the commissioner to grant special assessment in this case. This is a good sample of the extreme difficulty in the determination of tax under these provisions, and the magnitude of this overassessment shows its very great importance.

Case No. 5

Code name: The "B" Rubber Co.
Figures involved:

Original assessment	$614,768.27
Final tax liability	476,340.02
Overassessment	138,428.25
Refunded	138,428.25
Interest	51,072.44
Total allowance	189,500.69

Subject: Special assessment.

DISCUSSION

The refund in this case is due to the application of the special-assessment provisions of the 1918 revenue act to the determination of tax for the year 1919.

The grounds for special assessment are two in number and both appear proper. These grounds are stated by the general counsel as follows:

1. "Where there are excluded from invested capital computed under section 326, intangible assets of recognized value and substantial in amount, built up or developed by the taxpayer."

2. "Borrowed capital": During the taxable year, the company had $1,172,000 in borrowed capital, or approximately one-half of the amount of the statutory invested capital.

In regard to the selection of comparatives, the report of the corporation auditor for this committee states as follows:

"It is the practice of the unit in a consolidated case where the companies are engaged in a somewhat different line of business to select comparatives representative of each industry in which the class of products fall. This has been done in the above-named taxpayer's case as will be noted by reference to the data sheet attached. Some of the comparatives represent manufacture of hard rubber while Company No. 2 is engaged in the manufacture of asbestos. After going over in detail with the auditor the data sheet attached hereto and examining the cases selected it would appear that the comparatives used are the best that could be obtained."

CONCLUSION

This division believes that the determination in this case is proper and in conformity with the law. It is submitted in order to make plain that certain cases clearly fall within the intent of Congress in enacting the special-assessment provisions.

Case No. 6

Code name: The Produce Co.
Figures involved:

Total original assessment (1922 and 1923)	$112,000.85
Final tax determined	None.
Overassessment	112,000.85
Refunded	112,000.85
Interest	19,524.35
Total allowance	131,525.20

Subject: Depreciation—Discussion.

The recommendation of the general counsel to the commissioner is shown in Exhibit 4 of the appendix.

It appears that on the original returns of the taxpayer for the years 1922 and 1923 depreciation was not computed on a proper basis and a new basis was set up on amended returns. The amounts originally claimed for depreciation and the amounts as revised on the amended returns are shown below:

Year	Depreciation taken on original returns	Depreciation claimed on amended returns
1922	$238,423.98	$627,082.56
1923	241,651.47	639,926.19

The bureau found the depreciation claimed on the amended returns proper.

The determination of depreciation is fundamentally a question of fact. This division could not properly comment on the determination of fact without a field examination. In view of the large change made in the depreciation, the rates allowed were examined and found to be as follows:

	Per cent
Buildings	3
Equipment	5
Machinery	5

These rates appear reasonable. It should be noted, however, that repairs were deducted from income in these years as shown below:

1922	$726,640.10
1923	938,575.72

How far such repairs had the effect of increasing the life of the plant is not determinate from the record. In fact, this is a general problem which has never been satisfactorily solved, but which should be studied in view of the very great deductions taken in arriving at net taxable income on account of depreciation and repairs.

CONCLUSIONS

It is conceded that the allowance made in this case is proper on the basis of the facts shown in the record and accepted by the bureau. The importance of depreciation deductions should be specially noted.

Case No. 7

Code name: The "C" Oil Co.
Figures involved:

Total original and additional assessments (1918 and 1919)	$2,585,489.33
Final tax determined	1,885,482.59
Overassessment	700,006.74
Refunded	600,006.74
Credited	100,000.00
Interest	255,440.00
Total allowance	955,446.74

Subject: Depletion.

DISCUSSION

The recommendation of the general counsel to the commissioner in regard to this case is shown in Exhibit 5 of the appendix.

The principal issue in this case is the determination of the depletion allowance on oil wells. The depletion allowances claimed and allowed are shown in the following table:

Year	Oil depletion claimed by taxpayer	Oil depletion originally allowed by bureau	Oil depletion finally allowed
1918	$5,515,464.07	$2,779,079.91	$4,392,782.54
1919	37,214,875.18	9,744,761.59	11,033,320.11

The procedure in this case was unusual. The taxpayer filed suit in the Court of Claims for about $2,000,000. The case was compromised out of court for $700,000. Then a valuation was set up by the engineering division which would make the statutory tax agree with the amount of the compromise.

Such a method of fixing the tax and then working back to a valuation from the tax, is, in general, condemned. However, investigation showed that the valuation made was based on reasonable and proper factors and that the engineer making the valuation was satisfied that the value found was conservative.

CONCLUSION

It is probable the refund made in this case was for the best interests of the Government and that a larger refund would have resulted if the case had been carried through the court. The fact must be faced, however, that as long as the tax is based in these cases on the determination of valuations which vary by as much as 400 per cent according to the views of different experts, then just so long will compromises be necessary in these cases.

Case No. 8

Code name: "Standard" Tobacco Co.
Figures involved:

Total of original and additional assessments (1912 to 1918)	$13,800,517.37
Final tax determined	6,179,630.13
Overassessment	7,620,887.24
Refunded	1,964,729.02
Credited	24,625.91
Abated	5,631,532.31
Total	7,620,887.24
Interest	923,817.38
Total allowance	8,544,704.62

Subject: Invested capital.

DISCUSSION

The principal reason for the overassessment in this case is the adjustment of invested capital. The case is very voluminous and has been carefully reviewed; it is believed that on the basis of the facts admitted by the bureau the adjustment is proper.

The increase in invested capital amounting to approximately $36,000,000 is due largely to the valuation of tangibles and intangibles of predecessor companies acquired by the taxpayer at the time of incorporation. These valuations were based on certain facts which could only be verified by a field investigation. The legal action of the bureau appears to have been proper.

CONCLUSION

This case is illustrative of the great difficulty which is experienced with invested capital computations. A full discussion of all the various points involved would be too voluminous for the purposes of this report.

It is pointed out that one of the principal troubles is due once more to questions of judgment in the matter of valuations.

Case No. 9

Code name: The City Trust Co.

Figures involved:

Total of original and additional assessments (1917 to 1920)	$819,223.95
Final tax determined	593,465.56
Overassessment	225,758.39
Refunded	225,758.39
Interest	49,860.77
Total allowance	275,619.16

Subject: Red Cross contribution.

DISCUSSION

The principal reason for the refund in this case is the deduction from income of State franchise and Federal capital-stock tax accrued. The only point, however, which will be discussed is the allowance as a necessary expense deductible from income of a contribution to the American Red Cross in 1917.

The recommendtion of the general council to the commissioner states in part as follows:

"The first item is the allowance of a Red Cross donation in the amount of $90,100. During this year the taxpayer made a contribution to the American Red Cross in the amount of $100,100. The taxpayer contends that it would have in any event contributed to the Red Cross during this year but would not have given in excess of $10,000, except for the reason that the taxpayer was the principal depositary of the American Red Cross and had been such for some time prior to 1917. The average balance of the deposit of the American Red Cross with the taxpayer for the period from June, 1917, to June, 1918, was $7,446,000. The bank paid interest at the rate of 3 per cent on this deposit to secure a much higher rate of return through reinvestment.

It was held in Treasury Decision 2847 that corporations are not entitled to deduct from gross income the amount of contributions to religious, charitable, scientific, or educational corporations or associations even though such contributions may be made to the Red Cross or other war activities. The taxpayer takes the position, however, that the amount of $90,100, being the amount of its donation in excess of a fair ordinary contribution, should not be classified as a contribution but as an ordinary and necessary business expense. The taxpayer relies upon the provisions of article 562 of Regulations 45, providing that "donations which ultimately represent a consideration for a benefit flowing directly to the corporation as an incident of its business will be deductions from gross income." In appeal of Anniston City Land Co. (2 B. T. A. 526) a contribution by a corporation engaged in the business of land sales, made to the Chamber of Commerce of Anniston, was allowed as a deduction. The board said, "It is difficult to imagine an expenditure which would have stimulated demand as did this contribution. Such a contribution has, in a direct sense, a reasonable relation to the taxpayer's business." In the appeal of Citizens Trust Co. of Utica (2 B. T. A. 1239), a contribution by the taxpayer to the Oneida County Farm Bureau was allowed as a deduction upon the finding that it was an ordinary and necessary expense of the business. The facts herein bring the case within the provisions of the regulations and the application thereof made by the Board of Tax Appeals. Accordingly the deduction of $90,100 may be allowed."

This division was not convinced by the above reasoning and drew this item to the attention of the bureau. It is believed that the bureau did not change their position.

Treasury Decision No. 2847 states in part as follows:

"The Attorney General, in an opinion dated May 19, 1919, states the view that ordinary and necessary expenses contemplated by paragraph 1 of sections 214 and 234 were not intended to include all necessary expenses, because the two immediately succeeding paragraphs provide for deducting interest and taxes, both of which are necessary expenses; also the provision in regard to allowance for salaries, compensation, rentals, etc., indicates that all of the expenses which are contemplated under the terms used in paragraph 1 of these sections are expenses incurred directly in the maintenance and operation of the business, and not all those which may be beneficial and even necessary in the broader sense.

"In addition to the above considerations and to the fact that there is express provision for deducting contributions or gifts in the case of individuals, which is wanting in the section providing for deductions to be made by corporations, reference to the legislative history of the revenue act of 1918 (CONGRESSIONAL RECORD for September 17, 1918) shows that an amendment providing that corporations might make deductions of contributions or gifts, as in the case of individuals, came to a vote and was defeated, the principal reason assigned in the debate being that it would be dangerous to authorize directors to be generous with the money of their stockholders even for such laudable purposes.

"Corporations are therefore not entitled to deduct from their gross income for the purposes of the income tax the amount of contributions made to religious, charitable, scientific, or educational corporations or associations, even though such contributions are made to the Red Cross or other war activities."

It can be seen from the above quotation that under published decisions contributions by corporations to the Red Cross are not deductible from income even though such contributions "may be beneficial and even necessary in the broader sense."

CONCLUSION

This is a case where in the opinion of this division one of the issues has been decided in a manner not in accordance with existing decisions. It appears that the legal advice of the bureau is contrary to our opinion.

Case No. 10

Code name: The "D" Railroad Co.

Figures involved:

Total and additional assessments (1909 to 1916)	$112,421.33
Final tax determined	54,959.49
Total overassessment	57,461.84
Previously allowed	627.79
Overassessment (present)	56,834.05
Refunded	56,834.05
Interest	32,550.89
Total allowance	89,384.94

Subject: Affiliation.

DISCUSSION

The "D" Railroad Co. was affiliated with the "Universal" Steel Co. for 1917 and subsequent years. The refund allowed in this case is not due primarily to affiliation but nevertheless this question is involved. The refund is made as a result of the application of section 284 (c) of the revenue act of 1926, which provides as follows:

"If the invested capital of a taxpayer is decreased by the commissioner, and such decrease is due to the fact that the taxpayer failed to take adequate deductions in previous years, with the result that there has been an overpayment of income, war-profits, or excess-profits taxes in any previous year or years, then the amount of such overpayment shall be credited or refunded, without the filing of a claim therefor, notwithstanding the period of limitation provided for in subdivision (b) or (g) has expired."

The only question that will be discussed in this case is the question which has caused much of the trouble in the case of the consolidated returns of affiliated companies, and which can be stated as follows:

Does the consolidated-returns provision create a new taxable status that is "one economic unit" for tax purposes, or does each corporation in the affiliated group retain its individual entity as a taxpayer?

The United States Board of Tax Appeals states as follows in the Farmers Deposit National Bank case (5 B. T. A. 527):

"On the other hand, it said, plainly enough we think, in section 240 (a) of the revenue act of 1918, that the generally recognized principle of corporate identity was to be overridden for the purpose of the income and profits taxes; that the separate existences of the affiliated companies ceased for tax purposes. It created out of two or more affiliated companies, otherwise having separate identities, a new tax status; and when it did so Congress intended that the group should have the attributes of a single taxpayer. And where, in other sections of the statute, Congress speaks of corporations as individual taxpayers, it means as to the sections dealing with consolidated units to treat the consolidated unit as a single corporation."

If this view is correct and the opinion seems decidedly broad, then it does not appear that in the case of the "D" Railroad Co. its taxes for 1909 to 1916 should be effected by adjustments in the invested capital of an affiliated group which had a "new tax status" and was treated as a "single corporation."

However, Mr. Nash, assistant to the commissioner, states in a letter to this division, as follows:

"'Taxpayer' is defined in section 2 (a) (9), Part IV of the revenue act of 1926 as 'any person subject to a tax imposed by this act,' while 'person' is defined in section 2 (a) (1), Part IV of the same act as 'an individual, a trust or estate, a partnership, or a corporation.' When corporations become affiliated for tax purposes under the provisions of section 240 of the various revenue acts they are required to file a consolidated return on Form 1120 and in addition separate returns on Form 1122. Each affiliated company is specifically made subject to tax under the provisions of section 240 and being subject to tax must be regarded as a taxpayer within the meaning of section 2 (a) (9), supra."

CONCLUSION

The opinion of this division is in agreement with the statement of Mr. Nash on the point discussed. It is important to note that the application of the so-called "economic unity theory" as advanced by the board is in conflict with the "separate entity theory" long practiced by the bureau and it is one of the factors in the difficulty experienced in the administration of the consolidated-returns provision.

Case No. 11

Code name: Estate of John Moe.

Figures involved:	
Total tax paid	$833,018.79
Final tax determined	679,085.50
Amount of refund	143,933.29
Interest	26,770.93
Total allowance	170,704.22

Subject: Estate tax.

DISCUSSION

The recommendation of the general counsel to the commissioner in regard to the case is shown in Exhibit 6 of the appendix.

It appears that John Moe owned at the time of his death an eight-ninths interest in John Moe & Co., a partnership. This partnership held bonds (or notes) of the "X" Motor Truck Co., having a book cost of $1,382,173.43.

John Moe died on May 31, 1922. At this time the "X" Motor Truck Co. was in operation but was losing money. In December, 1922, the "X" Motor Truck Co. went into the hands of a receiver.

The estate tax division valued the bonds (or notes) above referred to at $750,000 in their original determination of the tax.

The estate in support of a claim for refund, made affidavit that the bonds (or notes) had been sold during liquidation by court order for $1,000. This affidavit was accepted by the estate tax division and this decrease in value from $750,000 to $1,000 is the principal cause for the refund in this case.

An investigation made by this office showed that the assets of the "X" Motor Truck Co. were sold at receiver's sale on November 23, 1925.

It appeared probable that a certain beneficiary of the estate bought the bonds referred to for $1,000, and that on sale of assets such beneficiary might have received a substantial amount for same. The Treasury Department agreed to check this point up in the field to see that any difference between the $1,000 and the amount received should be included in taxable income.

CONCLUSION

This case is illustrative of the difficulty often encountered in valuation of securities for estate-tax purposes.

Case No. 12

Code name: "X" Leather Co.

Figures involved:	
Total original and additional assessments (1919)	$3,520,486.60
Final tax determined	3,173,673.24
Overassessment	346,813.36
Refund	346,813.36
Interest	140,858.48
Total allowance	487,671.84

Subject: Inventory adjustments.

DISCUSSION

The refund in this case is due principally to the reduction in inventory as of December 31, 1919. The taxpayer on this date showed an inventory of approximately $75,000,000, of which $39,577,036.68 consisted of hides, mostly purchased in 1918 at war prices. The return for the taxable year 1919 was made on the basis of an inventory at cost. The taxpayer later filed claim for refund, alleging that since its returns were made on the basis of "cost" or "market" whichever is lower as to inventories, it was entitled to have the inventory of December 31, 1919, revised on the basis of market, for the reason that market was lower than cost.

The bureau's explanation of its action is shown in Exhibit 7. This division made an examination of this case in the files of the bureau. Its findings are shown in Exhibit 8 of this report.

CONCLUSION

The principle applied in revising the inventory is in accord with the commissioner's regulations. The prices adopted by the bureau were accepted without check. The case is illustrative of many refunds resulting from the revaluation of inventories at market value.

Case No. 13

Code name: The "T" Typewriter Co.

Figures involved:	
Total original and additional assessments (1918 to 1920)	$167,426.79
Final tax determined	66,462.59
Overassessment	100,964.20
Previously allowed	4,466.73
Present overassessment	96,497.47
Refunded	96,497.47
Interest	34,606.65
Total allowance	131,104.12

Subject: Installment sales.

DISCUSSION

Considerable discussion has been had in connection with the so-called double-taxation feature of the present regulations applying to the installment sales method of reporting income in the year or years of transition from the accrual basis.

This actual case where the taxpayer originally reported on the accrual basis and subsequently changed to the installment basis shows that considerable benefit is secured by this change, even if the cash received in the current year on account of sales made in prior years is included in income. The latter basis was the method used in this case, the figures for which are shown below:

Year	Net income		Decrease in taxable income by change
	Accrual basis	Installment basis	
1918	$263,340.11	$253,471.90	$9,868.21
1919	497,854.20	135,336.70	362,517.50
1920	272,706.67	151,211.10	121,495.57

The above adjustments in net income were by far the principal changes made in these returns and are therefore the controlling factor in the allowance of the refund of $96,497.47 plus interest of $34,606.65. This large refund is allowable even under the double taxation method; if the method outlined in the Treasury decision of October 20, 1920, had been used the refund would have been still larger.

CONCLUSION

This case appears properly determined. It is presented as illustrative of the effect of changing from the accrual to the installment basis.

MISCELLANEOUS REMARKS

The study of individual cases has been very valuable to this division as a means of determining in a practical and concrete manner the operation and effect of our revenue acts.

The search for the principal points at issue in these cases has indicated certain provisions of the act which are troublesome. It has become apparent that wherever valuations are necessary difficulty follows. The determinations of facts as of dates far in the past is also a source of trouble.

Numerous cases in addition to these described could be listed but it appeared that those chosen are sufficient for the general purposes of this report. The complete file on the 323 cases submitted is in the hands of this division and open to the inspection of the members of the joint committee.

CONCLUSION

While certain points in connection with the refunds have been frankly criticized in this report it must be admitted that the great majority of the refunds have been correctly determined on the basis of the facts submitted.

Even in the relatively few doubtful cases it is also conceded that there are ample grounds for a difference of opinion.

The examination of these refunds has been instructive in connection with the more constructive work of this division provided for in section 1203 of the revenue act of 1926.

Respectfully submitted.

L. H. PARKER,
Chief Division of Investigation.

DECEMBER 8, 1927.

BUREAU OF INTERNAL REVENUE,
OFFICE OF THE GENERAL COUNSEL,
March 12, 1927.

In re John Doe & Co. (Inc.).

MR. COMMISSIONER: A certificate of overassessment in favor of the above-named company for the period February 25 to June 30, 1920, has been submitted for approval in the amount of $116,260.83.

The taxpayer filed its original return for the fiscal year July 1, 1919, to June 30, 1920. This return indicated a taxable income of $346,408.44. From the information contained in the return and in briefs filed by the taxpayer the bureau has found that there was no attempt to incorporate prior to February 25, 1920, and that prior to this date there was no user of corporate powers and that the taxpayer did not exist as a de facto corporation prior to that date. The bureau has, therefore, held that the taxpayer should file a return from February 25 to June 30, 1920. Inasmuch as the income for the entire fiscal year was included on the return, the ruling as to effective date of corporate organization excludes the income earned prior to February 25. This amount of income is approximately $226,408. Mr. Doe has been taxed on this income individually.

The income shown by the return has been reduced by an adjustment to closing inventory in the amount of $111,926.34 by an increase in purchase of $9,183.28 and by the allowance of accrued State taxes of $15,649.88. As above stated, the taxpayer benefits in these reductions

in income to the extent which the portion of the year in which it was in existence bears to the total fiscal year.

A field investigation has been made by the bureau and after a careful review of the records of the goods on hand June 30, 1920, and of the market price of the inventory items a valuation resulting in the reduced inventory figure has been determined. Reference was made by the field examiner to actual sales of goods immediately after the inventory date to substantiate the market value. It is noted that the market price of the inventory items actually fell below the figure used in the preparation of the inventory valuation approved by the unit. It is believed that the reduction in the inventory to the amount found by the unit to be the true market price at the date the inventory was taken is a proper adjustment under the provisions of article 1584 of Regulations 62, and it is, therefore, recommended that this action be approved.

The adjustment to purchases is a net adjustment on account of outstanding purchase contracts which the taxpayer claims to have been filled prior to the close of the taxable year so as to make it the owner of the goods. Due to the fall in market price, this results in a claimed loss for the taxable year 1920. The revenue agent has rejected the taxpayer's claim in so far as it relates to goods which were billed and/or delivered after June 30, 1920. It is believed that this action is proper in that there was no appropriation of goods to the contract by the seller and hence the taxpayer was not vested with title to the goods prior to the close of the taxable year. The agent has, however, allowed to be included in inventory goods actually invoiced and billed to the taxpayer prior to June 30. The goods in question were actually received by the taxpayer prior to June 30 and returned for further processing as they did not come up to contract specifications and were in specie returned to the taxpayer at a later date. The inclusion of these goods in inventory due to the decline in market results in a deduction in 1920 income of $9,483.28.

The books of the taxpayer were on an accrual basis, and a surplus reserve was set aside to take care of the State taxes applicable to the period ended June 30, 1920, which taxes accrued before the end of that period. It is believed that those taxes constituted an allowable deduction from income and that the amended income found by the bureau is correct.

In view of the foregoing it is believed that the audit resulting in the present certificate of overassessment is correct, and it is recommended that the overassessment be allowed.

A. W. GREGG,
General Counsel Bureau of Internal Revenue.

Approved.

D. H. BLAIR,
Commissioner of Internal Revenue.

OFFICE OF THE GENERAL COUNSEL OF INTERNAL REVENUE,
August 5, 1927.

In re Roe & Roe.

Mr. COMMISSIONER: A notice of interest allowance in the amount of $12,697.61 has been prepared in favor of the above-named taxpayer for the calendar year 1917.

A certificate of overassessment of the taxable year 1917 in the amount of $60,014.94 was allowed and entered on Schedule It–A–17461, under dated of December 2, 1925, and a check, voucher No. 3935, was mailed to the taxpayer under date of April 16, 1926, covering $29,960.23, the refund portion of the overassessment. Of the amount of tax represented by the overassessment, $1,577.87 was abated, $14,291.41 was credited to unpaid taxes of John Roe, while $14,185.43 was credited to unpaid taxes of James Roe. The taxpayer has agreed to these credits.

At the time of making these adjustments interest in the amount of $14,135.68 was computed from the dates of payment of the tax (a) on the amount refunded to the date of the schedule on which the overassessment was allowed, or (b) on the amount credited to the due date of the outstanding tax to which credit was applied, as prescribed by section 1116 of the revenue act of 1926, as follows:

Amount refunded	Amount credited	Interest allowed		Interest
		From—	To—	
$29,960.23		Apr. 1, 1918	Dec. 3, 1925	$13,791.55
	$27,974.74	do	June 15, 1918	344.13

No interest was computed on the balance credited, $502.14, as the date of payment thereof was subsequent to due date of the tax to which credit was applied.

Subsequently, the taxpayer filed suit in the United States Court of Claims for additional interest on the amounts credited to James Roe and John Roe, alleging that the interest on the amounts credited should have been computed from the date of payment of the tax to the date of the allowance of the credit.

Under date of May 4, 1927, the Attorney General was informed that upon reconsideration of the case this office takes the view that, since the partnership was a taxable entity distinct from the partners, there was no statutory authority for crediting the overassessment due the partnership against the deficiencies due from the individual partners. The credit was made solely under the consent filed by the partnership and the partners. In substance, the crediting of this overassessment by consent or contract against the individual partner's liability was a refund to the partnership paid to the persons designated by the partnership to receive it. This crediting being in substance a refund, interest should be computed in accordance with the statutory provisions relating to interest on refunds, and, accordingly, interest on the entire amount of the overassessment should be computed in accordance with the provisions of the revenue act of 1926, relating to refunds, since the refund in this case was paid after the passage of that act.

The Attorney General was requested if after considering the matter he agreed with the view taken by this office that he notify claimant's counsel that upon filing with him in escrow of a motion to dismiss the case would be continued by consent, the administrative file would be returned to the Income Tax Unit with direction to reopen the claim and to allow interest on the amount credited, and that upon the allowance and payment of the interest the motion to dismiss the case would be filed.

Under date of June 22, 1927, the Attorney General informed this office that the attorneys for the plaintiff had filed with him in escrow a motion to dismiss when settlement should be made.

Accordingly, a recomputation of the interest payable has been made, resulting in allowing interest on $57,934.93 from April 1, 1918, the date of payment of the tax to December 3, 1925, the date of allowance of the refund or credit, and on $502.14 from June 21, 1920, the date of payment of the tax to December 3, 1925, the date of the allowance of the refund or credit, making the total interest due $26,833.29, and as interest in the amount of $14,135.68 had previously been paid there remains the difference, or $12,697.61 additional interest to be paid.

Accordingly, it is recommended that the above-mentioned payment of interest be allowed.

A. W. GREGG,
General Counsel Bureau of Internal Revenue.

Approved August 8, 1927.

D. H. BLAIR,
Commissioner of Internal Revenue.

In re The "A" Iron Products Co.

Mr. COMMISSIONER: A certificate of overassessment for the year 1920 in favor of the above-named company in the amount of $62,423.24 has been submitted for approval.

The unit has made a field examination of the taxpayer's records and has found an amended taxable income and statutory invested capital which result in an additional tax liability of $37,992.52. This determination of income and capital has been acquiesced in by the taxpayer. A claim was filed, however, for assessment under the provisions of sections 327 and 328 of the revenue act of 1918, and the present certificate of overassessment reduces the tax liability on a statutory basis by $100,415.76 to result in the proposed overassessment of $62,423.24.

The taxpayer lists several grounds for special assessment, among them being low officer's salaries, appreciation in value of assets, built-up good will not reflected in statutory capital, and understatement of assets on its books due to the fact that large sums expended on additions, replacements, and other capital items were charged to expense in prior years. The first three grounds stated by the taxpayer do not constitute a basis for the allowance of special assessment. The unit has found, however, from a review of the taxpayer's records for later years that large expenditures were made for additions and capital items. These expenditures were not capitalized but were charged to expense, and therefore the book value of assets is understated and the statutory capital can not be satisfactorily determined. An abnormality results due to this condition under the provisions of section 327 (a) of the revenue act of 1918.

In the preparation of a data sheet the unit has reviewed all of the concerns similarly circumstanced with respect to gross income, net income, profits per unit of business transacted, and capital employed, and has selected concerns engaged in a like or similar trade or business as that conducted by the taxpayer. It is believed that the present data sheet used in the computation of tax liability resulting in the proposed certificate of overassessment is the best that can be prepared and lists concerns selected in accordance with the provisions of section 328 of the revenue act of 1918.

In view of the foregoing, it is believed that the computation of income and tax liability resulting in the present certificate of overassessment is in accordance with the provisions of the revenue act of 1918, and it is therefore recommended that the certificate of overassessment be approved.

A. W. GREGG,
General Counsel Bureau of Internal Revenue.

Approved.

D. H. BLAIR,
Commissioner of Internal Revenue.

OFFICE OF THE GENERAL COUNSEL OF INTERNAL REVENUE,
April 8, 1927.

In re The Produce Co.

Mr. COMMISSIONER: Certificates of overassessment of corporation income taxes have been prepared in favor of the above-named company for the years 1922 and 1923 in the amounts of $37,533.74 and $74,467.11, respectively.

The above overassessments propose to refund the entire amount of tax assessed against the above-named company for the years 1922 and 1923. The returns originally filed show taxable income for 1922 and 1923 of $300,269.91 and $595,736.85. These original returns indicated that deductions had been taken for depreciation in the amounts of $238,423.98 and $241,651.47 for the years 1922 and 1923, respectively.

In the bureau audit of the case for the years 1917 to 1921, inclusive, segregation was made of the taxpayer's assets in the various classes and depreciation was allowed on the segregated costs of assets on the basis of the estimated life of each type of asset. The depreciation claimed by the taxpayer in its original returns was arbitrary and not based on the actual loss sustained from that source during the years in question.

Amended returns were filed by the taxpayer for the years 1922 and 1923 following the bureau audit for prior years and claiming depreciation on the same basis as had been allowed for the years 1917 to 1921, inclusive. The depreciation claimed in the amended returns for 1922 and 1923, respectively, was $627,082.56 and $639,926.19. In view of the fact that the amended returns reflected the actual depreciation sustained by the taxpayer and the reduction of income by this increased depreciation resulted in no income subject to tax, the present action in refunding the entire amount assessed on the original returns appears to be proper.

In addition to the foregoing it is noted that the audit of the return for the year 1921 indicates a statutory net loss of $988,382.41. The field examination of the case indicates that losses were sustained also for the years 1922, 1924, 1925, and 1926, and that the income for the year 1923 is less than $10,000. In view of the provisions of section 204 of the revenue act of 1921, the application of the net loss against the income for the year 1923 results in a net loss for the taxpayer for all of the years, 1921 to 1926, inclusive.

In view of the foregoing, it is recommended that the overassessments indicated above be allowed.

A. W. GREGG,
General Counsel Bureau of Internal Revenue.

Approved April 11, 1927.

D. H. BLAIR,
Commissioner of Internal Revenue.

OFFICE OF THE GENERAL COUNSEL OF INTERNAL REVENUE,
March 26, 1927.

In re The "C" Oil Co.

Mr. COMMISSIONER: There have been prepared two certificates of overassessment in favor of the above-named taxpayer, one for 1918 in the amount of $293,144.84 and the other for 1919 in the amount of $406,861.90, corporation income and profits taxes. This corporation was affiliated with two small subsidiaries.

For 1918 the taxpayer filed a return reflecting a net income of $5,981,229.63 and invested capital of $7,003,437.45, and upon the resulting tax computation an assessment was made of $1,880,542.40. In this return a deduction was claimed for depletion of $2,161,133.71. Subsequently, on September 22, 1921, an amended return was filed for 1918 claiming a depletion deduction of $5,515,464.07 on oil and $63,365.62 on coal production and a consolidated net income of $1,507,421.92.

For 1919 a return was filed reflecting a net loss of $25,731,567.42, so that no tax was then assessed. This return claimed a depletion deduction of $37,733,986.23, mostly on oil and gas produced, the balance on coal. An amended return, filed September 22, 1921, showed a net loss of $25,104,907.78, and in this return the taxpayer claimed an allowance of oil depletion of $37,214,875.18, and depletion of $42,012.59 on coal.

On September 22, 1921, the taxpayer also filed a refund claim asking return of $2,494,751.16, made up of $1,894,751.16 for 1918, and $600,000 for 1919. This claim was based upon the amended returns then filed, and a request for application of the 1919 net loss against the 1918 net income, under section 204 (b) of the revenue act of 1918. The Income Tax Unit thereafter made an audit of the returns for 1917, 1918, and 1919, set out in bureau letters to the taxpayer on December 4, 1922. This audit disclosed an overassessment of $119,842.15 for 1917, which was proposed to be credited against additional taxes proposed, for 1918 in the amount of $154,670.47, and for 1919 in the amount of $550,276.46. These two amounts were assessed in December, 1922, and the refund claim for 1918 and 1919 accordingly rejected. Of the 1918 depletion of $5,515,464.07 deducted for oil, the bureau disallowed $2,736,384.16, and also disallowed $26,355.64 depletion on coal. The consolidated net income was set up as $4,269,046.03, and special assessment, under section 328 of the revenue act of 1918, was allowed, with an average profits tax rate of 40.62 per cent. The bureau audit also disallowed $27,470,113.59 depletion claimed for 1919 on oil, and $17,474.31 on coal, and there resulted a consolidated net income of $2,404,387.10.

Early in April, 1923, the taxpayer filed suit in the Court of Claims, asking recovery of $2,614,593.31 (with interest), which included the amount of the refund claim for 1918 and 1919, and the credit of $119,842.15 for 1917. The suit was based primarily on claims for additional depletion allowances through revaluation of the producing properties and establishment of increased discovery values. Sundry objections were raised, also the adjustments made by the bureau to the 1919 invested capital as returned. Testimony was taken in said suit, and thereafter, at the suggestion of the taxpayer, proposal was made to settle the case through agreement on the depletion allowance. The bureau has agreed to allow additional depletion on (oil) discovery values, in the amount of $613,702.63, for 1918, and the revised net income is $3,655,343.40. The tax computation, upon this net income, using the special assessment rate of 40.6214 per cent for determining the profits tax, discloses a total tax liability for 1918 of $1,742,068.03, as shown upon the certificate of overassessment.

For 1919, the audit of December 4, 1922, reduced the invested capital returned, from $12,357,869.09 to $10,745,115.44, chiefly through revision of the adjustments for Federal taxes in prior years, dividends paid within the current year, discount on capital stock issued for sundry tangible assets, sustained depreciation and depletion reserves, and inadmissible assets. The bureau has agreed to allow additional depletion, on discovery values, of $1,288,558.52, resulting in a net income of $1,115,828.58. By computing the tax thereon, without changing the invested capital set up in the letter of December 4, 1922, for profits-tax purposes, the corrected tax for 1919 is shown as $143,414.56, as indicated in the certificate of overassessment.

The revised depletion allowances having been computed by engineers of the bureau, and accepted by the taxpayer as a compromise basis for dismissal of its suit for refund of 1918 and 1919 taxes, it is recommended that the overassessments be allowed. Attention is called to the fact that $100,000 of the overassessment of $293,144.84 for 1918 was refunded to the taxpayer out of a prior appropriation, on December 7, 1926, and payment for 1918 to this taxpayer under schedule No. 22840 will be reduced by that amount.

A. W. GREGG,
General Counsel Bureau of Internal Revenue.

Approved.

D. H. BLAIR,
Commissioner of Internal Revenue.

OFFICE OF THE GENERAL COUNSEL,
BUREAU OF INTERNAL REVENUE,
March 24, 1927.

In re Estate of John Moe.

Mr. COMMISSIONER: The claims for refund filed on behalf of the above-named estate on account of estate taxes paid have been prepared for allowance in the sums of $10,777.73 and $133,155.56.

The first claim was predicated upon an additional deduction sought on account of executors' commissions in the sum of $53,888.67. These commissions were approved by the court and paid and, therefore, constitute a proper deduction in determining the value of the net estate.

The second claim was based upon an additional deduction sought on account of debts of decedent. This indebtedness represents the decendent's liability as a member of the firm of John Moe & Co. In determining the decedent's liability under the former review of the return, there was included in the assets of the partnership bonds of the "X" Motor Truck Co. at a value of $750,000. It has now been established that these bonds are worthless and accordingly the decedent's liability on account of the indebtedness of the firm is increased in the sum of $665,777.78, which constitutes a proper deduction.

After taking into consideration the proposed adjustments, the value of the net estate is found to be $5,187,927.50, the tax upon the transfer of which amounts to $679,085.50. The estate paid a tax of $823,018.79, resulting in a total excess payment of $143,933.29, of which amount $10,777.73 is subject to be refunded as a result of the adjustment allowed on the basis of the first claim, and $133,155.56 as the result of the adjustment allowed on the basis of the second claim.

In view of the foregoing, it is recommended that the proposed refunds be allowed.

A. W. GREGG,
General Counsel Bureau of Internal Revenue.

Approved.

D. H. BLAIR,
Commissioner of Internal Revenue.

OFFICE OF THE GENERAL COUNSEL
BUREAU OF INTERNAL REVENUE,
September 16, 1927.

In re "X" Leather Co.

MR. COMMISSIONER: A certificate of overassessment of corporation income and profits taxes has been prepared in favor of the above-named company for the year 1919 in the amount of $346,813.36.

The overassessment is principally due to the allowance of a deduction in income through a revaluation of the inventory of raw hides

owned by the taxpayer on December 31, 1919. Other adjustments to income have been made increasing the income shown on the return by approximately $2,000,000, which increase in income has been offset by the allowance of the reduction in closing inventory.

The income shown by the original consolidated return has been increased in the present audit of the case in the amount of $1,976,651.06. This increase in income is due to the disallowance of deductions taken on the original return for donations in the amount of $1,230, Federal income and profits taxes in the amount of $2,465.45, depletion in the amount of $145,891.70, depreciation of $4,492.02, losses in connection with bark and timber $14,641.72, losses on the sale of capital assets in the amount of $1,203,746.93, loss on railroad property in the amount of $6,558.37, and minor adjustments of $2,642.56. In addition the Income Tax Unit has restored to taxable income, Liberty bond interest of $425 and increase in surplus reserves of $594,557.31.

The disallowance of excessive deductions claimed for depletion and depreciation is in accordance with the determination by the Income Tax Unit of the proper depreciation and depletion sustained by the taxpayer during the year 1919. The allowance made in the present audit of the case is based upon a field examination and represents the actual depreciation and depletion sustained. The net increase in the surplus reserves was caused by charges to book profit and loss and the restoration of these erroneous charges to taxable income appears proper. The loss on the sale of capital assets arises in connection with deductions claimed by the "X" Leather Co. of $176,444.28, the "Y" River Land Co., $20,283.58; "R" and "S" Railroad Co., $2,450; "P" Tannig Co., $515,814.58; and "T" Tanning Co., $488,774.29.

In this connection the Income Tax Unit has found that the assets disposed of consisted of plants abandoned before March 1, 1913, and that the plants had a sales price in between the cost and their March 1, 1913, value. The taxpayer has acquiesced in the restoration to income of the amounts erroneously charged off as losses in connection with the sales of these plants. The loss claimed on the railroad property is in connection with property which was neither abandoned nor charged off during the year 1919. This claimed loss on the railroad property has accordingly been disallowed as a deduction from gross income by the Income Tax Unit. The foregoing additions to income appear proper, and as above stated, the taxpayer has acquiesced in the same.

The income shown on the return as increased by approximately $2,000,000 above explained, has been reduced by the revaluation of the closing inventory in the amount of $3,969,210.54 and the overassessment arises out of this change in inventory value. The Income Tax Unit has fixed prices on the various grades of raw hides owned by the taxpayer after a review of prevailing prices as indicated in trade papers of December 31, 1919. The prices fixed by the unit represent the actual market on December 31, 1919, and appear to have been determined in view of substantial market movements. The result of the revaluation of inventories is indicated in the following schedule:

Recapitulation of revised inventory

	Per books	As claimed	As allowed
Leather in stores	$17,117,048.59	$14,280,413.22	$14,117,048.59
Lumber	1,171,352.36	853,605.76	1,171,352.36
Glue	434,799.00	369,667.94	434,799.00
Hides	39,577,036.68	34,956,875.25	35,607,826.14
Betterments, etc	16,637,587.34	16,637,587.34	16,637,587.34
Total	74,937,823.97	67,098,148.51	70,968,613.43
Revised	70,968,613.43		
Reduction	3,969,210.54		

The invested capital shown on the original return has been reduced by $11,836,116.61. The reduction in capital is principally due to the exclusion of good will, the cash value of which at acquisition could not be satisfactorily established by the taxpayer. The reduction in invested capital increases the tax liability and reduces the present overassessment. The limitations of the good will included in invested capital to its cash value at acquisition is in accordance with the provisions of section 326 (a) (4) and (5) of the revenue act of 1918.

In view of the foregoing, it is recommended that the overassessment above indicated be allowed.

A. W. GREGG,
General Counsel Bureau of Internal Revenue.

Approved September 15, 1927.

D. H. BLAIR,
Commissioner of Internal Revenue.

DECEMBER 6, 1927.

Mr. L. H. PARKER,
Chief Division of Investigation,
Joint Committee on Internal Revenue Taxation,
House Office Building, Washington, D. C.

In re "X" Leather Co.

MY DEAR MR. PARKER: Pursuant to your written instructions, I have made an examination of the above-named taxpayer's case, in which a refund of $346,813.36 is proposed for the year 1919.

The principal item constituting adjustments resulting in the refund is the repricing of an inventory item at the end of the taxable year, classified in schedules as hides. The pricing of the hides has been made upon the basis of the market value at the date of the inventory, whereas the taxpayer's original return showed the hides at cost. Data sufficient to verify the correctness of these pricings is not available, and an examination of the schedule would seem to indicate that the prices have been carefully worked out.

It is, therefore, recommended that no objection to the proposed refund be made.

Respectfully,

G. D. CHESTEEN,
Corporation Auditor

EXHIBIT No. 4

UNITED STATES STEEL CORPORATION AND SUBSIDIARIES

Part 1. Taxes paid on account of year 1917

(Date and amount of payments of 1917 income and excess-profits taxes)

Date paid and net amount paid (after legal discount):	
Apr. 23, 1918	$9,989,766.97
Apr. 25, 1918	27,145,910.19
Apr. 27, 1918	51,226,964.12
May 6, 1918	110,698,167.19
May 8, 1918	32,492.16
May 13, 1918	28,344.45
May 14, 1918	848.72
Dec. 29, 1919	7,190,165.71
Dec. 3, 1920	6,369,497.75
Feb. 14, 1921	167,073.30
Aug. 29, 1921	4,000,000.00
Total payments	216,849,230.56

Part 2. Overpayments allowed on account of above payments for the year 1917, i. e., credits or refunds

Date	Credit to subsequent years	Refunded in cash
Aug. 9, 1926	[1] $22,621,502.92	
Jan. 15, 1927		$37,503.39
Feb. 18, 1928	[2] 5,640,568.37	
Jan. 5, 1929 (proposed)		15,756,595.72
Total	28,262,071.29	15,794,099.11

[1] To 1918. [2] To 1919–20.

Total credits and refunds $44,056,659.16.

Part 3. Interest on credits and refunds

(Date and amount of interest payments by the Government to the taxpayer)

	Credited to subsequent years	Refunded in cash
Sept. 20, 1926		$252,204.93
Feb. 1, 1927		13,719.56
Feb. 18, 1927	[1] $732,269.38	
Jan. 5, 1929 (proposed)		[2] 11,000,000.00
Total	732,269.38	11,265,924.49

[1] To 1919–20. [2] Approximate.

Total interest credited and refunded $11,998,193.87.

Part 4. Interest that will be due on credits against additional taxes for subsequent years which may have been erroneously assessed

Date:	Interest to be refunded
Future (approximate)	$13,000,000

Part 5. Summary

Taxes paid		$216,849,230.56
Refunds and credits	$44,056,659.16	
Interest paid or credited	11,998,193.87	
Probable additional interest	13,000,000.00	
		69,054,853.03
Probable final tax, less interest		147,794,377.53
(1) Years adjusted, 1916 and 1917:		
Original tax, 1916	$61,218.24	
Correct tax	58,052.62	
Overassessment		$3,165.62
Original tax, 1917	1,093,140.66	
Additional tax, 1917	1,153.93	
Total	1,094,294.59	
Correct tax	574,593.80	
Overassessment		519,700.79
Total overassessment		522,866.41
Adjusted by credit to taxes for 1919 and 1920.		
(2) Years adjusted, 1917, 1919, and 1929:		
Original tax, 1917	$1,387,849.62	
Correct tax	311,218.56	
Overassessment		$1,076,631.06

(2) Years adjusted, 1917, 1919, and 1929—Continued.

Original tax, 1919	$927,866.04	
Correct tax	None.	
Overassessment		$927,866.04
Original tax, 1920	301,449.87	
Correct tax	None.	
Overassessment		301,449.87
Total overassessment		2,305,946.97

Adjusted by refund of $557,551.87 and credit of $1,748,395.10 to taxes due for 1918.

(3) Years adjusted, 1918 and 1919:

Original tax, 1918	$385,614.71	
Correct tax	44,212.93	
Overassessment		$341,401.78
Tentative tax, 1919	25,000.00	
Final tax	112,871.99	
Total	137,871.99	
Correct tax	68,786.08	
Overassessment		69,085.91
Total overassessment		410,487.69

Adjusted by refund of $331,298.39—credit of $55,765.45 to taxes due for 1920 and 1921 and abatement of $23,423.85.

(4) Years adjusted, 1919, 1920, and 1921:

Original tax, 1919	$190,947.70	
Correct tax	None.	
Overassessment		$190,947.70
Original tax, 1920	130,639.11	
Correct tax	104.46	
Overassessment		130,534.65
Original tax, 1921	176,427.14	
Correct tax	74,828.53	
Overassessment		101,598.61
Total overassessment		423,080.96

Adjusted by credit to taxes due from Joseph Widener, George P. Widener, and Eleanor Widener Dixon for the year 1919.

(5) Year adjusted, 1919:

Original tax	$22,176,382.82	
Correct tax liability	14,388,696.56	
Overassessment		$7,787,686.26

Adjusted by credit to taxes for the fiscal year ended June 30, 1919.

(6) Years adjusted, 1918, 1919, and 1922:

Original tax for 1918	$21,323,497.00	
Additional tax	71,131.39	
Total tax assessed	21,394,628.39	
Correct tax liability	16,673,134.29	
Overassessment		$4,721,494.10
Original tax for 1919	9,706,950.52	
Correct tax liability	7,808,125.16	
Overassessment		1,898,825.36
Original tax for 1922	6,402,763.08	
Correct tax liability	6,105,755.16	
Overassessment		297,007.92
Total overassessment		6,917,327.38

Adjusted by credit to taxes for the years 1920, 1921, 1923, 1925, and 1926.

(7) Year adjusted 1919:

Original tax	$2,826,421.04	
Correct tax liability	1,611,840.42	
Overassessment		$1,214,580.62

Adjusted by credit to taxes for the year 1918.

(8) Year adjusted 1919:

Original tax	$275,647.77	
Correct tax liability	None.	
Overassessment		$275,647.77

Adjusted by credit of $113,625.29 to taxes for the year 1922 and by refund of $162,022.48.

(9) Year adjusted 1919:

Original tax	$534,217.04	
Correct tax liability	392,843.00	
Overassessment		$141,374.04

Adjusted by credit to taxes for the years 1920 and 1923.

(10) Year adjusted, 1917:

Original tax	$1,760,553.95	
Additional tax	55,654.31	
Total tax assessed	1,816,208.26	
Correct tax liability	1,565,176.08	
Overassessment		$251,032.18

Adjusted by abatement of $13,020.55 and by credit of $238,011.63 to taxes for the year 1928.

(11) Year adjusted, 1918:

Original tax	$1,165,033.65	
Amended tax	681,568.99	
Additional tax	59,829.80	
Total	1,906,432.44	
Correct tax liability	1,123,143.79	
Overassessment		$783,288.65

Adjusted by the following:

Abated	$7,530.28
Credited to 1919 additional tax	598,274.34
Refunded	177,484.03
Total	783,288.65

(12) Years adjusted, 1923 and 1924:

Original tax, 1923	$478,145.88	
Correct tax liability	443,553.11	
Overassessment		34,592.77
Original tax, 1924	424,115.74	
Correct tax liability	357,545.16	
Overassessment		66,570.58
Total overassessments		101,168.35

Total amount adjusted by credit to 1922 additional tax.

(13) Period adjusted—April 1, to December 31, 1918:

Original tax	$206,045.82	
Correct tax liability	None.	
Overassessment		206,045.82

Adjusted by credit to 1916, 1917, 1918, 1919, and 1920 additional tax.

(14) Years adjusted, 1923 and 1924:

Original tax, 1923	$205,444.79	
Less 25 per cent reduction	51,361.20	
	154,083.59	
Correct tax	None.	
Overassessment		$154,083.59
Original tax, 1924	69,796.32	
Correct tax liability	None.	
Overassessment		69,796.32
Total overassessments		223,879.91

Adjusted by credit to additional taxes assessed against Ellen S. Booth, William E. Scripps, and Anna S. Whitcomb for the years 1923 and 1924.

(15) Year adjusted, 1926:

Tax assessed	$145,399.64	
Tax liability	17,339.86	
Overassessment		128,059.78

Adjusted by credit to additional tax assessed for the year 1925.

(16) Year adjusted August 31, 1918:

Original tax assessed	$295,139.87	
Additional tax assessed	240,330.11	
Total	535,469.98	
Tax liability	81,901.12	
Overassessed		453,568.86

Adjusted as follows:

Abated	232,798.61
Credit 1917 additional tax	195,499.95
Credit Aug. 31, 1919, additional tax	25,270.31

(17) Year adjusted, June 30, 1918:

Original tax assessed	$109,553.08	
Amended return	17,147.01	
Supplemental return	80,046.26	
Total	206,746.35	
Tax liability	140,815.94	
Overassessment		$65,930.41
Year adjusted, June 30, 1919:		
Tax assessed	93,614.68	
Tax liability	None.	
Overassessment		93,614.68
Year adjusted, June 30, 1920:		
Tax assessed	250,578.70	
Tax liability	190,743.24	
Overassessment		59,835.46
Total overassessment		219,380.55

Adjusted by abatement of $18,216.64, credit of $175,675.84 applied to additional tax for fiscal year, June 30, 1923, and by refund of $25,488.07.

(18) Year adjusted, 1926:

Tax assessed	$253,458.82	
Tax liability	3,233.73	
Overassessment		$250,225.09

Adjusted by credit to additional tax for year 1925.

(19) Year adjusted, 1918:

Tax assessed	$97,165.39	
Tax liability	616.05	
Overassessment		$96,549.34
Year adjusted, 1919:		
Tax assessed	58,574.54	
Tax liability	1,205.69	
Overassessment		57,368.85
Year adjusted, 1920:		
Tax assessed	118,422.72	
Tax liability	774.47	
Overassessment		117,648.25
Year adjusted, 1921:		
Tax assessed	38,085.85	
Tax liability	1,306.38	
Overassessment		36,779.47
Year adjusted, 1922:		
Tax assessed	39,441.30	
Tax liability	1,376.88	
Overassessment		38,064.42
Year adjusted, 1923:		
Tax assessed	49,831.84	
Tax liability	1,608.81	
Overassessment		48,223.03
Total overassessment		394,633.36

Adjusted by credit of $375,064.06 credited to additional taxes for the years 1918 to 1923 inclusive assessed against the subsidiary companies, Green Island Mill Corporation and Manning & Peckham Co., and by refund of $19,569.30.

(20) Years adjusted, 1917 and 1918:

Original tax for 1917	$8,063,043.65	
Additional tax, April, 1920 L	3,546,474.33	
Additional tax, August, 1920 L	32,138.37	
Total tax assessed	11,641,656.35	
Correct tax liability	11,575,125.62	
Overassessment		$66,530.73
Original tax for 1918	16,112,393.64	
Additional tax, April, 1920 L	7,908,618.57	
Additional tax, August, 1920 L	2,185,947.36	
Total tax assessed	26,206,959.57	
Correct tax liability	23,321,490.77	
Overassessment		2,885,468.80
Total overassessments		2,951,999.53

Adjusted as follows:

Total amount abated	2,209,160.69
Total amount credited to 1919 additional tax	517,036.16
Amount refunded, 1918	225,802.68
Total	2,951,999.53

(21) Year adjusted (fiscal ending August 31, 1917):

Original tax	$687,170.65	
Additional tax	1,485,973.05	
Total	2,173,143.70	
Correct tax	729,510.63	
Overassessment		1,443,633.07

Adjusted by abatement of $1,214,067.95 and credit of $229,565.12 to taxes due for fiscal years ending August 31, 1914; August 31, 1915; August 31, 1916; and August 31, 1918.

(22) Year adjusted, 1918:

Original tax	$7,239,847.04	
Correct tax liability	4,094,508.15	
Overassessment		3,145,338.89

Adjusted by abatement of $1,777,954.63, refund of $126,790.40, and credit of $1,240,593.86 to taxes due for the year 1920 and to interest on deficiencies in tax for the years 1909, 1910, 1911, 1913, 1914, 1915, 1916, 1917, and 1919.

(23) Year adjusted, 1918:

Original tax	$490,782.11	
Correct tax liability	117,996.55	
Overassessment		372,785.56

Adjusted by credit to taxes for the years 1917 and 1920.

(24) Year adjusted, 1918:

Original tax	$5,127,028.58	
Correct tax	4,606,116.46	
Overassessment		520,912.12

Adjusted by credit to taxes due for the years 1919 and 1922.

(25) Year adjusted, 1919:

Original tax	$2,961,386.69	
Additional tax	6,468.07	
Interest	285.30	
Total	2,968,140.06	
Correct tax liability	2,728,625.38	
Overassessment		239,514.68

Adjusted by credit to taxes due for 1920.

COMMUNICATIONS TO THE TREASURY DEPARTMENT BY L. H. PARKER

JULY 12, 1928.

Mr. E. C. ALVORD,
Special Assistant to the Secretary of the Treasury,
Walker-Johnson Building, Washington, D. C.

DEAR MR. ALVORD: In connection with the overassessments totaling $1,231,006.78 proposed in the case of P. Lorillard & Co., of New York, and submitted to this committee on June 21, 1928, the following comments are made:

This division has substantially the same opinion in regard to this allowance as in the case of the R. J. Reynolds Tobacco Co. (Our letter dated August 9, 1927.) However, as the bureau, after review, did not sustain our opinion in the Reynolds case to request another review on the same points in this case would appear to occasion unnecessary work, and therefore such a request is not made.

On June 4, 1928, the Supreme Court of the United States held in the Williamsport Wire Rope Co. case that the courts were without jurisdiction to review the determination of the commissioner in special assessment cases. In view of the fact that during our investigation of the R. J. Reynolds case we were informed that the case was allowed because it was feared that the taxpayer would get a larger refund by going to the courts, and using the American Tobacco Co. as a comparative, it would seem proper to request your consideration of the question as to changing the policy of the bureau in such cases as this, where no "exceptional hardship" is proven, and where the taxpayer is not entitled to relief except through executive action.

It is not desired to bring about any loss of interest to the Government in this case, but, as the date of payment is not until July 21, it is believed sufficient consideration can be given to our second comment in the nine days available.

Very truly yours,

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JULY 12, 1928.

Mr. E. C. ALVORD,
Special Assistant to the Secretary of the Treasury,
Walker-Johnson Building, Washington, D. C.

DEAR MR. ALVORD: Please find inclosed copy of a report from Mr. G. D. Chesteen, corporation auditor for this committee in regard to the overassessment proposed in the case of Eisemann Bros., Boston, Mass. This case was submitted to the committee on June 25, 1928, and the 30-day period will expire on July 25.

The overassessment in this case is due entirely to the allowance of special assessment under section 210 of the revenue act of 1917. The ground for the allowance is excessive borrowed capital.

It is the opinion of Mr. Chesteen, concurred in by the writer, that excessive borrowed capital does not constitute a ground for special assessment in the year 1917, and that this opinion is sustained by the Board of Tax Appeals Decisions and the position taken by the appeals division of the general counsel's office.

It is requested that due consideration be given to the points raised in Mr. Chesteen's report before the refund or credit occasioned by this overassessment is finally made. As 13 days remain before the 30-day period expires, and as there is practically only one issue involved, it appears certain that ample time is available for such consideration without causing loss of interest to the Government.

Very truly yours,

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JULY 13, 1928.

Mr. E. C. ALVORD,
Special Assistant to the Secretary of the Treasury,
Walker-Johnson Building, Washington, D. C.

DEAR MR. ALVORD: Application of the special-assessment provisions, section 210 of the revenue act of 1917 and sections 327 and 328 of the revenue acts of 1918 and 1921, by the Bureau of Internal Revenue are still giving this office much concern.

Your consideration is requested of the following propositions which appear to be correct from our investigation:

1. During the year March 1, 1927, to March 1, 1928, out of the total refunds and credits allowed by the bureau and submitted to the joint committee under the urgent deficiency bill, it was found that 21 per cent in amount of money were due to the allowance of special assessment.

2. It appears, therefore, that the total refunds and credits on account of special assessment were very probably in the neighborhood of $50,000,000 for the year above noted if the same relation existed in the smaller refunds as in those over $75,000.

3. The Supreme Court of the United States decided on June 4, 1928, in the case of the Williamsport Wire Rope Co. against the United States, that the courts have no jurisdiction to review the determinations of special assessment made by the Commissioner of Internal Revenue. It results that while deficiencies may be reviewed by the Board of Tax Appeals, the determination of the commissioner in regard to special assessment where refunds or credits are involved, is final.

4. It now appears that the commissioner had it entirely within his discretion during the period above noted whether to give back this

$50,000,000 to the taxpayers or not, a power which is unique in our executives branch, as the return of such money could not be enforced by law.

5. Under the revenue act of 1928, refunds and credits in excess of $75,000 are still submitted to the joint committee. These refunds, under the act above mentioned, were first submitted on June 9, 1928. On July 11, out of a total number of 45 cases submitted under the above act 11 cases, or 24 per cent, were due principally to the allowance of special assessment.

6. The different divisions of the general counsel's office are not in accord on the basis for the allowance of special assessment. The appeals and civil divisions hold, for instance, that borrowed capital does not constitute an abnormality under the revenue act of 1917. On the other hand, the interpretative and claims divisions hold that borrowed capital does constitute an abnormality. (See report on Elsemann case already submitted.) From the above, it results that the bureau is more liberal in allowing refunds and credits than it is in assessing additional tax. This state of affairs appears indefensible.

It is the opinion of the writer that in view of the fact that the special-assessment provisions have not been in the revenue acts since 1921 and also because there appears to be no diminution in the amount of refunds and credits allowed under these provisions, that the application of same be given serious consideration in order to restrict the granting of refunds and credits to the really meritorious cases.

This division can not help but note that while the law requires that an "exceptional hardship" must be proven in each case, the bureau rarely, if ever, meets this requirement and contents itself merely with proving an abnormality. It appears far from the purpose of Congress to give relief to corporations with large surpluses who are, and were, well able to pay the statutory tax, to say nothing of the fact that in these refund and credit cases the tax was, of course, actually paid.

The writer would also like to examine the record of special-assessment cases kept by the commissioner in accordance with section 328 (c) of the revenue acts of 1918 and 1921, and awaits your advice as to where such record may be examined.

It appears to the writer that the general subject of special assessment is of such importance that the policy of the bureau on these determinations should be the subject of conference, especially in view of the Williamsport Wire Rope Co. case above noted. I would be glad to be informed as to your views on this subject.

Very truly yours,

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MARCH 28, 1928.

Mr. E. C. ALVORD,
Special Assistant to the Secretary of the Treasury,
Walker-Johnson Building, Washington, D. C.

DEAR MR. ALVORD: Inclosed please find a copy of a report addressed to me from the corporation auditor of this committee in reference to the refund proposed on schedule No. 28611 to the Montana Power Co., of Butte, Mont.

It appears from this report that there may exist an error in the computation of invested capital due to the failure to take into account all the assets and liabilities of a subsidiary company upon its acquisition. The apparent omission of some $19,000,000 in bonds outstanding seems particularly important.

It is requested that the case be reviewed on the points raised in this memorandum and that the writer be advised of the results of your review. Date of payment in this case is April 30, 1928.

Very truly yours,

L. H. PARKER.

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MARCH 26, 1928.

Mr. L. H. PARKER,
Chief Division of Investigation,
Joint Committee on Internal Revenue Taxation,
House Office Building, Washington, D. C.

In re Montana Power Co., 40 East Broadway, Butte, Mont.

MY DEAR MR. PARKER: Pursuant to your written instructions, I have made an examination of the proposed refund to the above-named taxpayer in the amounts and for the years as set forth below:

Year	Amount
1920	
1921	$35,660.71
1922	39,325.29
	62,441.94

The proposed refund for the year 1920 appears to be in error. The basis for this conclusion is set forth below:

FINDING OF FACTS

The commissioner has determined a net income for the year 1920 in the amount of $2,928,172.17. The excess-profits tax is not computed in the final A–2 letter. A previous A–2 letter, however, dated January 18, 1927, disclosed an invested capital of $40,927,903.94, and upon the basis of this computation the commissioner in the final A–2 letter to the taxpayer stated that the credit under the provisions of section 312 was in excess of the net income and for that reason no excess-profits tax was due for the calendar year 1920. The computation of invested capital as thus disclosed appears to be in error. The facts and reasons for this position are as follows:

OPINION

The Montana Power Co. was organized in December, 1912, with an authorized capital stock of $25,000,000 preferred and $75,000,000 common. The company was organized for the purpose of effecting a merger of a number of small public utilities operating in Montana and adjoining States. At the time of incorporation, capital stock was issued for the following companies and their subsidiaries: Butte Electric & Power Co., Madison River Power Co., Missouri River Electric & Power Co., and Billings & Eastern Montana Power Co. These companies, with their subsidiaries, were merged with the Montana Power Co. as a result of their acquisition. The record does not show whether the stock of the Montana Power Co. was issued to the companies direct, or whether it was issued to the stockholders of these companies, after which the companies were liquidated. In either case, the treatment for income-tax purposes is the same, and the manner in which the merger was effected is not material.

Among the assets of the Butte Electric & Power Co. was one-half the capital stock outstanding of the Great Falls Water Power & Townsite Co. The taxpayer, in the instant case, desiring to own the entire capital stock of this company, in the following year—that is, the calendar year 1913—issued $17,500,000 common and $5,000,000 preferred stock to John D. Ryan, the then owner of the remaining one-half capital stock of the foregoing company. An additional $5,000,000 capital stock was then issued for the entire capital stock of the Thompson Falls Power Co., the capital stock of the latter company being $5,000,000.

Subsequent to the acquisition of the Great Falls Water Power & Townsite Co., which was a holding company, the capital stock of the latter was reduced by partial liquidation, in which the stock of its subsidiaries—the Great Falls Power Co. and the Great Falls Townsite Co.—were distributed to the parent company. The organization thus effected continued through the taxable years 1917 to 1923. It is apparent therefore that the Montana Power Co. issued its stock partly as a result of the merger of certain companies and partly for the acquisition of certain subsidiary companies. For the purpose of invested capital for the years 1917 to 1921, the bureau has consistently held that where stock of a subsidiary is acquired by stock of the parent company the amount to be included in consolidated invested capital with respect to the company acquired is computed in the same manner as if the assets had been acquired instead of the stock. This position has been upheld by the Board of Tax Appeals (see Hollingsworth, Turner & Co., Vol. I, United States Board of Tax Appeals Repts., p. 958).

The bureau apparently attempted to apply the principle set forth above in the computation of invested capital in this case, but, due to an error in excluding the excess value reported on the return, appears to have allowed an excess amount in invested capital for the year 1920 to the extent of approximately $16,401,077.74. It is obvious, from the statements set forth above as to the manner of issue of capital stock for assets, that liabilities of all properties merged, as well as affiliated, at the time of issue of capital stock, must be taken into consideration in determining the net amount of capital stock issued for properties. The taxpayer appears to have set up on its books at the time of incorporation the entire par value of capital stock issued therefor. An appraisal was made of all physical properties, and a write up in excess of these properties as carried on the predecessor company's books was made to the extent of the amount necessary in order to make a total of assets equal to the total capital stock and liabilities of the companies merged.

COMPUTATION OF INVESTED CAPITAL AS SHOWN BY THE BUREAU IN A–2 LETTER, DATED JANUARY 18, 1927

1920

Invested capital as shown by return	$63,231,451.38
As corrected	40,927,903.94
Net reductions as explained below	22,303,547.44
Additions:	
(a) Organization expense	397,000.10
(b) Minority interest	530.00
(c) Reserves	73,323.03
(d) Refund of 1917 Federal income tax	27,590.06
(e) Bond discount amortization	10,576.20
(f) Overassessment, 1918	42,827.31
Total additions	551,846.70
Reductions:	
(g) Interest during construction	885,581.01
(h) Appreciation	20,264,102.77
(i) Additional depreciation	368,402.27
(j) Federal income tax for 1919	80,726.03
(k) Unsubscribed stock	13,183.61
(l) Employees' stock subscription	210,069.60
(m) Dividends paid Jan. 1, 1920	494,812.75
(n) Inadmissibles	538,516.10
Total reductions	22,855,394.14
Net reductions as above	22,303,547.44

The corrected invested capital is approximately as follows:

Invested capital as shown above in A–2 letter, dated Jan. 18, 1927		$40,927,903.94
Deduct:		
(a) Appreciation at date of acquisition not eliminated	$16,401,077.74	
(b) Additional depreciation for 1918 and 1919 allowed	628,142.89	
(c) Amortization allowed for 1918	238,970.20	
		17,268,190.83
Corrected invested capital		23,659,713.11

Explanation of items changed

(a) Adjustment for appreciation of assets at date of incorporation:

Value of plant, equipment, water rights, etc. at date of acquisition	$35,965,274.01	
Excess of other assets over all liabilities other than bonds of companies outstanding at date of acquisition	2,577,878.81	
Total		$38,543,152.82
Less: Par value of bonds outstanding at date of acquisition		19,775,000.00
Actual cash value for which stock of $55,433,333.33 was issued		18,768,152.82
Par value of stock issued		55,433,333.33
Net reductions		36,665,180.51
Reduction made by bureau letter, dated January 18, 1927		20,264,102.77
Excess invested capital allowed		16,401,077.74

(b) Additional depreciation for 1918 and 1919:

Name of company	Year	Additional depreciation and replacements
Montana Power Co	1918	$145,537.57
Montana Reservoir Co	1918	11,923.35
Idaho Transmission Co	1918	2,535.63
Thompson Falls Power Co	1918	15,461.03
Montana Power Co	1919	272,646.54
Great Falls Power Co	1919	147,531.81
Thompson Falls Power Co	1919	15,908.90
Montana Reservoir and Irrigation Co	1919	11,926.81
Idaho Transmission Co	1919	4,671.25
Total		628,142.89

The above additional depreciation has been allowed in the closing of the years 1918 and 1919 in excess of the amount allowed in A–2 letters for those years prior to the date of the issue of the A–2 letter for 1920, as shown above.

(c) Amortization allowed for 1918:

Name of company: Montana Power Co.; year, 1918; amortization allowed, $238,970.20.

The above represents the amount recommended in an engineer's report dated January 9, 1928, which appears not to have been given effect to at the time of the preparation of this memorandum.

On the basis of the invested capital set forth above the approximate additional tax due for the year 1920 is $259,380.42, as shown by the following computation:

Excess-profits credit

8 per cent of invested capital		$1,840,777.05
Special exemption		3,000.00
Excess-profits credit		1,843,777.05

Computation of excess-profits tax

Invested capital	per cent	20
Income		$3,284,779.33
Credit		$1,843,777.05
Balance		$1,441,002.28
Rate	per cent	20
Tax		$288,200.46

Income tax

Net income		$3,284,779.33	
Less:			
Interest on obligations of United States not exempt	$104.51		
Excess-profits tax	288,200.46		
Exemption	2,000.00		
		290,304.97	
Balance taxable at 10 per cent		2,994,474.36	299,447.44
Total income and excess-profits tax			587,647.90
Tax previously assessed			328,267.48
Additional tax due for 1920			259,380.42

Inasmuch as the commissioner has proposed a refund of $35,660.71, whereas there appears to be an additional tax due of approximately $260,000, it would appear that the apparent error should be called to the attention of the bureau in order that the determination might be made of whether or not a refund should be proposed in this case.

VALUATION OF PROPERTIES

The result of book entries at the date of incorporation and acquisition of the properties was to record in the account of properties, an excess value sufficient to set up the par value of the capital stock of the companies. The taxpayer, in the year 1913, appears to have made an appraisal of the properties for the purpose of rates, and, in accordance with this determination, made claim to its original book entries for valuation of properties. An engineer of the amortization section of the Internal Revenue Bureau, J. W. Swaren, was assigned to this case, and, after an exhaustive examination, set up a valuation of physical properties at the date of acquisition of the companies, in the following amounts:

Subsidiary	Value of—			Total
	Physical assets	Water rights	Intangibles	
Butte Electric & Power Co.	$3,000,348.57	$0.00	$379,029.40	$3,379,377.97
Madison River Power Co.	4,508,209.76	0.00	0.00	4,508,209.76
Billings & Eastern Montana Power Co.	1,549,008.08	9,760.40	987,917.90	2,546,686.38
Missouri River Electric & Power Co.	7,699,029.02	0.00	0.00	7,699,029.02
Thompson Falls Power Co.	145,833.43	2,234,188.28	0.00	2,380,021.71
Great Falls Power Co.	8,016,407.29	7,150,042.00	0.00	15,166,449.29
Rainbow Hotel (two-thirds interest)	185,925.33	0.00	0.00	185,925.33
National Realty Co. (one-half interest)	22,593.75	0.00	0.00	22,593.75
Total	25,127,355.23	9,393,990.68	1,366,947.30	35,888,293.21

It is therefore recommended that for the purposes of computing the invested capital of the taxpayer, that the sum of $35,888,293.21 be established as the values of properties acquired by stock issue at the time of merger.

In addition to the above properties, the taxpayer made claim for other properties acquired by stock issue, as follows:

Subsidiary	Date of acquisition	Value of assets acquired			
		Physical	Water power	Intangibles	Total
Conrad Electric and Power Co.	Oct. 1, 1913	$21,757.87	$0.00	$0.00	$21,757.87
Mesa Power Co.	Aug. 5, 1914	55,222.93	0.00	0.00	55,222.93

All costs and audit features of this appraisal are subject to check by the auditor or revenue agent assigned to the field investigation of this case.

Protest to this valuation appears not to have been made. The record indicates that the taxpayer accepted immediately the valuation proposed by the bureau. This valuation, it will be noted, has been used in the computation of the corrected invested capital. The engineer, in making the computation of the value of water rights, utilized the records and results of the taxpayer for the period 1913 to the date of the examination, 1923. He also made approximations and speculations as to what the possibilities as to earning power and increase in the plant and development of water rights would be up to 1942. The utilization of subsequent results of a taxpayer and the approximation of a long period of future years as to growth of population, increase in industrial plants, and amount of electricity to be used, to establish the value of water rights at a given date, in order to prove the actual cash value of stock issued therefor for invested capital, appears open to question in the light of the provisions of section 326 of the revenue act of 1918. It is not believed, however, in view of the amount established for water rights, that even though the principles adopted may be open to question, the results should be criticized. Comparison of the market value of the capital stock of the company immediately after incorporation while probably influenced by future possibilities, yet is some indication of the value of properties acquired. According to stock quotations, the stock of the company on March 1, 1913, had a value of approximately $45 per share. Careful study of the whole file in the case with respect to the valuation of the property, convinces the reviewer that the value recommended by the engineer is reasonable and is not open to question.

COMMENTS AS TO PRIOR YEARS

The apparent overstatement of invested capital as shown for the year 1920 was also made in the years 1918 and 1919. In those years the taxpayer was determined not to be subject to excess-profits tax, and a refund was granted in each year, the amount being approximately $80,000 for both years. A tentative approximation of the apparent error for the year 1918 would indicate an additional tax was due of approximately $750,000. The taxpayer, in the year 1918, reported an income of approximately $3,200,000. This gives an approximate tax of 25 per cent.

The question of whether or not the taxpayer might be entitled under those circumstances to special assessment, of course, can not be approximated. It is possible that if a tax of this amount had been proposed the taxpayer would have been entitled to some reduction of the $750,000, on the basis that the tax should have been determined in comparison with representative corporations doing similar business, as provided in sections 327 and 328 of the revenue act of 1918. The years 1918 and 1919 appear to have been outlawed so far as the right of the Government to impose an additional tax is concerned. There is, however, apparently a claim pending for further refund for the year 1918, based upon the fact that the bureau has proposed to allow amortization in the amount of approximately $238,000. It is obvious that the taxpayer would be entitled to at least $25,000 further refund for the year 1918, unless the correction for invested capital mentioned is made.

For the year 1919 it has not been deemed necessary to set up a computation for invested capital. An approximation of the invested capital would indicate that a small amount of excess-profits tax would have been due for that year, but inasmuch as the statute has run as to additional assessment and no claims for further refund are pending it has not been necessary to make the computation.

For the year 1921 the reviewer has not made a computation of invested capital. It is assumed that the bureau in reviewing the question raised as to 1920 will make proper correction of any adjustment found necessary with respect to 1921 if it is found that an excess-profits tax is due for that year.

Respectfully,

G. D. CHESTEEN,
Corporation Auditor.

FEBRUARY 9, 1928.

Mr. E. C. ALVORD,
Special Assistant to the Secretary of the Treasury,
Washington, D. C.

MY DEAR MR. ALVORD: In regard to the proposed refund in the case of the Diamond Coal & Coke Co., Pittsburgh, Pa., it appears that there may be an error in the computation of this refund, due to the allowance of both amortization and depreciation on the same property in the same year. I inclose herewith a copy of a report addressed to me from Mr. Chesteen, corporation auditor of this committee, which outlines his opinion in regard to the apparent error above noted.

This refund is contained on schedule No. 28092, the date of payment being March 19, 1928.

Please advise me as to the opinion of the general counsel on the question raised.

Very truly yours,

L. H. PARKER.

Mr. ANTHONY. Mr. Chairman, I yield the balance of my time to the gentleman from Indiana [Mr. WOOD].

Mr. WOOD. Mr. Chairman, and gentlemen of the committee——

Mr. WINGO. Before the gentleman proceeds I would like to ask a question, because there is some confusion about it. Does this action in the court involving $100,000,000 principal and $60,000,000 interest cover the 1917 year only, or does it include all previous years?

Mr. WOOD. My information is that it covers everything involved in the 1917 returns.

Mr. WINGO. And the subsequent years might be more?

Mr. WOOD. Yes; I understand there are the return years 1918, 1919, and 1920 yet to settle.

Mr. GARNER of Texas. You know all 12 cases cover a billion dollars.

Mr. WINGO. What I wanted to know was whether it covered only the 1917 claim?

Mr. WOOD. I think that is all. I find that the suit in the Court of Claims by the United States Steel Corporation for $161,000,000, composed of $101,000,000 tax and $60,000,000 interest, is for the taxes of the return year 1917. With the payment of the claim for $26,000,000 this suit will be closed forever and that will be the end of it so far as 1917 is concerned. A suit is also pending in the Court of Claims for approximately $50,000,000 and interest for the return year 1918.

Mr. WINGO. There has been some confusion about it.

Mr. WOOD. Mr. Chairman, I listened attentively to the speech made by the gentleman from Texas [Mr. GARNER] the other day. I listened with equal patience to a rehearsal of the same speech before the Committee on Appropriations, of which I am a member, and I heard the most of it again for a third time to-day.

And through all this trial and tribulation I have been trying to make up my mind what it is that has prompted the gentleman from Texas to oppose this particular appropriation.

Since the beginning of the fiscal year 1917 and down to October 1, 1928, we have refunded in round numbers $975,000,000. It seems a little peculiar that not until this particular moment has any question been raised by the gentleman from Texas about the tax refund procedure. It might have occurred, and perhaps has occurred, to some of you gentlemen while listening to him, that when the American Tobacco tax refund was up the same question was not raised about that by the gentleman from Texas. The refund to the Steel Corporation is only one of a number of cases that have had similar treatment at the hands of the Bureau of Internal Revenue.

Why was not some question raised as to some of these other cases? Can it be that disappointment has embittered the soul of the man from Texas? Can it be that because he was not successful in defeating the Greek loan that he has taken this means of getting even with the Treasury Department of the United States?

What is involved in this question? There is no more involved in this question than has been involved in all of these cases that have been coming before this Joint Committee on Internal Revenue Taxation and will continue to come before it if it continues to have the duty of receiving them. The same methods have been employed, Assistant Secretary Bond testifies, except that they have been more particular with reference to the Steel case than with most any other case, because of the amount involved, and because of the fact that it is one of the very largest corporations in the United States, and because it has been charged here that the Secretary of the Treasury of the United States is a stockholder in that concern.

The gentleman from Texas would have the country believe that the Secretary of the Treasury, Mr. Mellon, has been sitting on one side of the table dictating what these settlements should be with the interests with which he may be connected. The gentleman from Texas certainly should not try to deceive the American people into a belief of that character, when he knows that the Secretary of the Treasury has nothing to do with making these settlements, when he knows that that responsibility by law is upon the Commissioner of Internal Revenue, who is appointed by the President and confirmed by the Senate of the United States and is independent of the Secretary of the Treasury. We took pains when Mr. Bond, the Assistant Secretary, was before the committee, to inquire with reference to the procedure in this case as compared with other cases, anticipating that the very insinuations would be made that have been made to-day by the gentleman from Texas, as to whether the Secretary of the Treasury, Mr. Mellon, in any case, has ever either suggested an addition to or a subtraction from, and he said that in no case has Mr. Mellon ever intervened personally, either directly or indirectly, in the settlement.

Mr. Mellon needs no encomiums from me. Speak about his destroying the confidence of the people, should he perchance be the Secretary of the Treasury for four years more! Mr. Chairman, in behalf of the American people, I say that I hope he will be the Secretary of the Treasury for four years more. [Applause on the Republican side.] I am proud of the record that he has made. Every Republican is proud of the record that he has made. Every fair-minded Democrat is proud of the record that he has made, because he is proud of his country and of what Mr. Mellon has contributed to its success. Not since the beginning of this Government has he had a peer in that office.

Three times since he has become Secretary of the Treasury he has refunded a national loan at a lesser rate of interest than that at which it was originally put out. Never in the history of the Democratic Party was such a feat performed. In doing that Mr. Mellon has saved to the American people $75,000,000 annually in interest. The Secretary of the Treasury needs no support from me. The record that he has made is the record of the progress of this country during the period of his service, and the people of the United States can never repay the obligation that they owe to him—this man who has been reviled by some of you, who has been insinuated against. You can not point a finger to a single scintilla of evidence showing any disregard on his part in the performance of the high duty imposed upon him from the time he became Secretary of the Treasury down to this actual hour.

What is the question before the House? The gentleman from Texas (Mr. GARNER) and his party colleagues are asking you to vote against this item of $75,000,000 for refund of taxes erroneously or illegally collected. Suppose you do; what will be the result? Nothing can occur such as the gentleman from Texas would have you believe would occur by way of investigation. If any investigation were had by such a committee as he suggested the Speaker appoint, it would have nothing to do with the settlement with the Steel Corporation. That, as has already been stated, has been made. What then would be the

result? If this $75,000,000 is denied, there are thousands of people throughout the United States, large and small, who are just as much entitled to their refund as the Steel Corporation is and who would be deprived of receiving it at this time. Are you going to take the responsibility of saying to them: "You shall wait until the next session of Congress for that money that you have been waiting for since 1917? Do not you believe that you would be taking a responsibility that should not be thrust upon you, and are you willing to do it? Are you willing to say to the people of the United States that, forsooth, because you have some grudge against the Treasury Department and want to get even with it you will take this $75,000,000 appropriation out of the bill and make all the claimants wait a year or more for the money that they are entitled to between now and July 1, 1929? That is the practical result.

Those who have spoken here in opposition to this item have taken pains to say that they know of no fraud, that they know of no collusion, that they know of no illegal act involved in it. Why, then, again I ask, should this case be made an exception to those thousands of other cases? They are settling these cases at the rate of 14,400 a month. They are within three years of being current. If they are permitted to go on and settle them in this businesslike way in which we are settling them, we will be current and we will have arrived at the stage that Mr. GARNER has been trying to have us arrive at for lo these many years. But he would stop this machinery. For what purpose? No accomplishment can be had unless we change the organic law. We began in 1918 in this same manner in making these consolidated return settlements under a regulation and continued under the regulation until 1921 when this same process and policy were enacted into law, and the gentleman from Texas voted for it. So that in condemning the process that has been followed in this case, in all these cases of many millions of dollars, he is condemning the program laid down by himself, and supported by the Congress. If there should be any criticism, then the criticism should be of Congress, which fixed this process. Mr. McAdoo should be criticized, if it is wrong, for inaugurating it by Treasury regulation in 1918.

Let me say in passing, that the case to which Mr. GARNER referred here, where there was a refund of 33 per cent, 11 years ago, was not under this administration. That was under a Democratic administration, but we hear no criticism with reference to the administration that permitted that thing to be.

If this were any other claimant than the Steel Corporation, if the amount involved were $500 instead of $26,000,000, there would be no question made here to-day, unless some fraud, some collusion, or some unlawful act were pointed out. Why I ask—and I ask the gentleman from Texas to answer—should we make an exception of this case? We have been intrusting, and we must continue to trust, the matter of making these settlements to the Commissioner of Internal Revenue, because of our faith in his integrity and in the integrity of his employees.

Why, if it was not for the confidence that this Congress has in the executive officers of the Government, this Government would go to pot in no time. This Government is founded upon confidence; and I want to say to you that it has been very seldom that there has been any abuse of confidence on the part of officials high in authority in the Government of the United States. I think we can with more than justifiable pride point to the fact that no one has ever occupied the position of Secretary of the Treasury of the United States who has ever incurred the disfavor of the American people by reason of any defalcation or any malfeasance in his office.

Mr. CRAMTON. Mr. Chairman, will the gentleman yield there?

Mr. WOOD. Certainly.

Mr. CRAMTON. I think about 170,000 of these cases are handled by the department annually. What does the gentleman think of the comparative efficiency with which either the Committee on Appropriations of this House or the House itself could investigate the merits of these claims that are passed upon, and what about the possibilities of politics entering into the decisions regarding them if this House is to be the final arbiter?

Mr. WOOD. It would be made the football of politics, and you would find men upon that side trying to make political capital out of it, if perchance they were in power, and we would also find gentlemen on this side—human nature is so weak—who could not resist the temptation to take advantage of the opportunity afforded.

Now what does an investigation by this Congress of the steel cases involve? It involves 195 subsidiaries, extending over a period of 10 years or 11 years. Mr. Bond, in testifying before us, said it would take a string of trucks to haul up the papers involved in the audit of this case; that it would make a pile 10 feet high covering an entire room the size of one of the rooms of the Committee on Appropriations. Do you think that any committee appointed by this body could become as conversant with this complicated subject in a single session of Congress as have these trained men who have been put upon this special work and kept at it continuously, and doing nothing else for years? How much reliance would this House have in the action of any such committee—no matter how much confidence it might have in them—when so much is involved in these examinations, covering this period of years, with this multiplicity of interests, involving, if you please, these truck loads of documents? No. It would be physically impossible and mentally impossible.

So, after all, I say we must have confidence in those in the executive branch who are instructed to do that thing, in those who are charged under the law with that duty. If gentlemen who are criticizing now could point their finger to any dereliction of any kind or any conspiracy whereby the Government of the United States is going to lose a farthing, then there would be something in the contention that is made.

Now, then, let us look for a moment at what occurred when they sent this case up to the Joint Tax Committee. That committee is composed of five men from the Senate and five men from the House. They had a quorum present. You have heard who were there: Mr. GARNER and Mr. COLLIER, representing the minority side, and Mr. SMOOT and Mr. REED and Mr. HAWLEY, representing the majority side. Five hours were spent in the conference. After the conference had closed Mr. HAWLEY said to Mr. GARNER, "Will you make a motion to disapprove this settlement?" Then was the time for Mr. GARNER to act, or else forever hold his peace.

But taking the promise of the Treasury Department that if there was a vote of disapproval of the settlement made they would not pay it but would go into court and let it drag its weary way for 10 years with 6 per cent additional interest each year. Mr. GARNER of Texas did not make the motion. Why? It was too enormous a thing. He would not take the responsibility involved in that action. That was the consideration that moved Mr. Parker, the committee expert. He, too, did not want to take the responsibility. Mr. REED had represented the Steel Co. previously in some legal capacity. He would not make a motion on that account.

Mr. LAGUARDIA. Mr. Chairman, will the gentleman yield there?

Mr. WOOD. Yes.

Mr. LAGUARDIA. Is the Steel Co. case the only refund about which there is any question?

Mr. WOOD. There has been no question raised about the Steel Co. case. There may have been a question raised, however, by Mr. Parker, the expert, who was afraid to touch it because it was too big. Many other cases have been certified up to this committee, and no question has been raised about the amount. You can take the letters referred to by Mr. GARNER of Texas and examine them, and in no case has the gentleman found any fault with the amount agreed upon or found to be due by the Treasury Department. The only fault he has found has been in the method of computation and in the mode of procedure that has been followed in this case, like those in other cases. The method followed in those other cases is exactly the same procedure that was followed in the Steel case.

Mr. CRISP. Mr. Chairman, will the gentleman yield?

Mr. WOOD. Yes.

Mr. CRISP. I am aware that my colleague from Texas [Mr. GARNER] has expressed his opinion in the committee, but if this committee performs no function and is only a receptacle to which these returns are sent, I would like to have the gentleman's view as to the advisability of the discontinuance of this committee.

Mr. WOOD. I was opposed to placing this refund duty on the joint committee at the time it was done. I could not see how it could serve any purpose. As was stated by the gentleman from Texas, it was first placed upon an appropriation bill, a deficiency bill, as I remember. It was the result of a compromise with the Senate in an attempt made by some gentlemen at the other end of this Capitol to get some legislation with reference to publicity of tax matters. This Congress has gone on record as being opposed to this idea of publicity of tax returns, and they were seeking, through a rider upon an appropriation bill, the accomplishment of the very thing that had been denied by the Congress.

Mr. TREADWAY. Will the gentleman yield for an interruption?

Mr. WOOD. Yes.

Mr. TREADWAY. Is the gentleman referring to the manner in which the joint committee was originally created or to the fact of reporting refunds in excess of $75,000?

Mr. WOOD. I am referring to the manner in which this refund reporting scheme was originally established. My memory is that it was first established by a rider upon a deficiency appropriation bill and later put into permanent law in the 1928 revenue act. I am not referring to the original purpose for which the Joint Tax Committee was created by the 1926 revenue act.

We have found that in all these millions of dollars worth of refunds there has been no objection to the settlement but the objection has been to the method of arriving at the settlement; yet that method is the method that has been prescribed by law, following out the regulations adopted by Secretary McAdoo away back at the beginning of things in 1918.

Now, I think it is an encomium and a compliment to the Bureau of Internal Revenue and the Treasury Department that they have so conducted their audits and that they have so justly arrived at conclusions as to what is fair to the Government and fair to the taxpayers, that all of these claims, in excess of $75,000, have passed the scrutiny of the expert, and Mr. GARNER says he is an expert, well calculated to go into these things and find out what is right and what is wrong. I think it is a compliment to the department that in only one single instance out of nearly 700 such cases has there ever been found a flaw with reference to the amount of money that has been allowed by the department in connection with these refunds.

Mr. LAGUARDIA. Will the gentleman yield?

Mr. WOOD. I yield.

Mr. LAGUARDIA. Under existing law have we any control over the payment of the refunds?

Mr. WOOD. The courts have no control over them in some cases. They have been talking here and much stress has been laid upon the fact that these refunds ought to be denied so as to force somebody to go into court and have the question determined before we pay the money. However, before we do that, gentlemen, we have something which we must do ourselves.

We must provide a law that will compel them to go into court or compel the Treasury Department to go into court, or somebody to go into court; but under the existing order of things that in some cases is impossible. Take, for example, the case of the Williamsport Wire Rope Co. under the relief sections of the 1917 and 1918 acts. In that case it was held that the court had no jurisdiction to review the action of the Commissioner of Internal Revenue. However, the court held that the Board of Tax Appeals has such jurisdiction. In certain special assessment cases it has been held by the Supreme Court of the United States that there is no appeal and that no court has jurisdiction to reverse or modify the conclusions arrived at by the commissioner.

So this is all just a hullabaloo about nothing. As I have stated before, and wish to repeat, the only thing that striking down this appropriation could accomplish would be to deny the thousands of citizens throughout the United States, who are entitled to refunds, the opportunity of having the money paid to them promptly when it is found due.

Mr. COLE of Iowa. Will the gentleman yield?

Mr. WOOD. I yield.

Mr. COLE of Iowa. All of these settlements have not been in favor of the claimants, have they?

Mr. WOOD. No.

Mr. COLE of Iowa. I wish the gentleman would give us some figures on that.

Mr. WOOD. I can not give the gentleman the proportion that has been either affirmed or denied, but I will say to the Members of this House that for every dollar of refund we are making we are collecting more than four times that amount in back taxes; so that the amount collected on these back taxes, to which the Government is entitled, exceeds the amount of refunds made down to this time; in other words, the amount of the refunds since 1917 is $975,000,000 as compared with over $4,000,000,000 collected from back taxes. The amount of taxes refunded is about 2.5 per cent of the whole amount collected during this period.

If this were a claim where $100 was involved, and the same principle was involved, would anybody raise any question about it? If that is so, why should we differentiate between this corporation—and it is a corporation—and an individual? Why should we differentiate because the amount is large or whether it is small, if we have confidence in the gentlemen whose duty it is to make the computations and arrive at the amount that should be repaid?

Investigations and audits are constantly in process, and as overpayments or underpayments of tax are discovered it is essential that the correction be made as promptly and honorably as possible in order that the taxpayer shall pay to the Government that which he owes or that the Government may pay as promptly as possible to the taxpayer that which has been erroneously or illegally taken from him. During all this time when refunds of $975,000,000 have been made, not one objection has ever come from anybody on this floor or from the Joint Tax Committee or anywhere else.

Mr. LAGUARDIA. Will the gentleman yield?

Mr. WOOD. Yes.

Mr. LAGUARDIA. There is no particular case before us for consideration under the bill. It is just a deficiency appropriation to pay refund of taxes generally, and we have no particular case before us to decide.

Mr. WOOD. Absolutely not, and we can not have that. It is simply setting up a straw man and tearing it down, and, as I said at the outset of my remarks, I can not for the life of me understand why the gentleman from Texas [Mr. GARNER] has worked himself up to such a pitch as he has done in trying to present his ideas with reference to this case.

Mr. GARNER of Texas. Will the gentleman yield?

Mr. WOOD. Yes.

Mr. GARNER of Texas. Would the gentleman be willing to accept an amendment to the $75,000,000 appropriation, a limitation to the effect that none of this money shall be used to pay claims in excess of $75,000 until the joint committee has had an opportunity to investigate the claims that are referred to it? That would take care of everybody under $75,000.

Mr. WOOD. That is just exactly what you have now.

Mr. GARNER of Texas. You will get a chance to vote on that. You are talking about these little fellows that are to be deprived of their money. This would deprive nobody of any money who has a claim that is not over $75,000 until the joint committee can make an investigation.

Mr. CRAMTON. Will the gentleman yield?

Mr. WOOD. Yes.

Mr. CRAMTON. The gentleman from Texas is a very powerful member of the joint committee; does he think or has the House any reason to think that the record of accomplishment of that joint committee up to date is such as to warrant our telling a great many people they must wait for their money pending some investigation that may not be made?

Mr. GARNER of Texas. No; I said when I had the floor that I agreed with my friend from Indiana that the committee is not worth a darn the way it is working now, but I am hoping to get some improvement and this limitation will give an improvement.

Mr. WOOD. I can not see how your proposal would bring about any improvement. It is not different from what you have already in the law. The gentleman is a member of that joint committee. By reason of his expert knowledge, his seniority, and the respect everybody has for him, I wonder how long it would take the gentleman to examine into the United States Steel Corporation case or the American Tobacco Co. case or the Insurance Co. cases. The gentleman would and could not do it. The gentleman would tell them all to take the taxes and go plumb to; that he had enough to do to attend to his own legislative business.

Here is one of the great problems we have, and I want to call your attention especially to this. Under this tax-refund reporting section of the 1928 revenue act we are getting the Congress, as a legislative body, mixed up with the executive departments of this Government in executive duties; and it is a bad practice and one that we ought to get away from. The Congress of the United States should have nothing to do with the execution of the laws of the United States. When we have passed the law we have done our duty, and it ought to be up to the other branch to execute it; because, whenever you involve the Congress of the United States as a partner in the execution of the law, then you are treading upon very dangerous ground, and you are undermining the very foundation upon which the Government was originated. You are inviting, if you please, all sorts of dissension—political and otherwise.

Mr. GARNER of Texas. Will the gentleman yield?

Mr. WOOD. Yes.

Mr. GARNER of Texas. Does the gentleman take the position that Congress ought never to make an investigation of an executive branch of the Government under any conditions?

Mr. WOOD. No; not at all.

Mr. GARNER of Texas. How can you get your information in any other way? You have got to make an investigation to ascertain whether the laws are being properly executed.

Mr. WOOD. That is quite a different thing. Making an inquiry to see whether the laws are being properly executed as compared with our being a part of the execution of the laws is quite different. That is just exactly what I am complaining about. It is our duty, if we find the laws passed by the Congress are not being properly executed, to inquire into the facts and find out the facts and to provide or to suggest a remedy.

I believe the gentleman, upon reflection, will agree with me that the Congress of the United States ought to keep aloof from the executive departments.

There ought to be just as wide a divergence there as there is between any encroachment of the legislative upon the executive or the executive upon the judicial. If we will hew to that line we will save ourselves a great deal of trouble and save the American people a great deal of woe.

Here is another thing I want to call the attention of the House to in connection with this case.

When once the Commissioner of Internal Revenue has determined in some of these cases that a refund is due, then if the commissioner does not proceed to remand it, the taxpayer can bring a suit to recover in the courts, but he can only recover the amount that the commissioner has found due him.

Now, maybe that is not right. It may be there ought to be a more liberal right given him. If it should be, this is the agency that should give it to him, and if a better way can be found than that which has been practiced since the adoption of this revenue law down to this goodly hour for ascertaining what is right with reference to invested capital, what is right with reference to combinations of principals and subsidiaries, it is up to the Congress of the United States to provide it. If any good is going to come out of this discussion, it will be by awakening the conscience of the responsible parties and bringing about an inquiry into the facts as to whether or not we have provided the proper machinery for the enforcement of this law.

Everybody knows that for the first four or five years it was impossible to find any two auditors that would come to the same conclusion upon the same given set of facts even with reference to small individual returns. There was this confusion with respect to the administration of the law.

By reason of this long practice, by reason of the expertness of those employed in the Treasury Department, and by reason of the experts that these large corporations and large business houses have had in expert men to make out their returns and study these laws, they have simplified it so that it is not half the job to-day that it was 10 years ago. There is yet room for improvement. In my opinion they could simplify the tax-return sheet so that almost any man with average intelligence could make out his own return. I daresay that there is not one-tenth of the Members of this House who could make out a tax return.

Now, criticism has been made against the Appropriations Committee that it was the duty of that committee to inquire into these refunds. Why, gentlemen, would they have us bring up cartloads and truckloads of these manuscripts and set somebody that we had confidence in to delve into those things to see whether a proper conclusion had been reached? It would take more time than all of the other business of the Appropriations Committee, and you would not have any confidence in us after you had got our results for the reason that there would not be sufficient time or information to make up the reports or come to sound conclusions.

Gentlemen, the Steel Corporation has been alive to its own interests and properly so, and has adopted this policy—that whenever an assessment was made against them by the Government they paid it. They have done so because if they did not interest would run against them. By paying it the Government has to pay this interest. That is the reason why you have $11,000,000 interest which the Government has to pay. Mr. Bond testified before our committee, and Mr. HAWLEY has made the statement before you, that in his opinion it is the best possible settlement that could have been made. It not only settles everything for 1917 but it settles the possibility of a lawsuit involving $101,000,000 for principal and $60,000,000 for interest. And yet criticism is made by reason of the fact that they bargain across the table.

Mr. Bond has described the manner in which these settlements are made. They are not compromises in the sense that a compromise is made, but when the facts are so close and there is a reasonable ground for dispute as to who is right and who is wrong, like business men, they settle and try to obviate the possibility of a lawsuit. Under the law, it is the duty to resolve every doubt in favor of the taxpayer.

Mr. LOZIER. Will the gentleman yield?

Mr. WOOD. Yes.

Mr. LOZIER. The trouble comes in the application of the law to the disputed facts when the settlement is made in the manner these settlements are made. No formula or rule has definitely or legally been established for the future guidance of the Treasury. Does not public policy demand that the matter be submitted to the Supreme Court for final arbitrament to the end that a definite formula shall be established to govern the cases?

Mr. WOOD. Here is the trouble. There are so many things entering into the cases. They tell me that they are as different as it is possible to conceive. This Congress has been trying since the beginning of this scheme of taxation to legislate some plan, some simplification, and we have not accomplished it.

After all the men charged with this duty who have acquainted themselves with the facts and then tried to apply the law as they understand it, I expect come as nearly to arriving at a proper conclusion as any court in the United States. If we have the right kind of auditors, experts, lawyers, and engineers, if we have honest men handling these cases, the Government is not going to be cheated out of much.

Mr. MOORE of Virginia. It has been brought out here that there is a good deal of delay in passing on these cases. With the United States Steel Corporation the delay has been so great that there is included here $11,000,000 for interest. Could not that delay be very much diminished if the force in the Treasury Department should be amplified?

Mr. WOOD. Yes; we asked Mr. Bond that question, and he says that this case has been expedited as much as it possibly could be. They picked out the best auditors, the best engineers, the best experts, and told them to stick to the business, and they have done nothing else.

The CHAIRMAN. The time of the gentleman from Indiana has expired.

The Clerk read as follows:

Be it enacted, etc., That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to supply urgent deficiencies in certain appropriations for the fiscal year ending June 30, 1929, and prior fiscal years, to provide urgent supplemental appropriations for the fiscal year ending June 30, 1929, and for other purposes, namely.

Mr. ANTHONY. Mr. Chairman, I move that the committee do now rise.

The motion was agreed to.

Accordingly the committee rose; and the Speaker having resumed the chair, Mr. LEHLBACH, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee had had under consideration the bill H. R. 15848, making appropriations to supply urgent deficiencies in certain appropriations for the fiscal year ending June 30, 1929, and had come to no resolution thereon.

SPEECH OF HON. JOHN Q. TILSON

Mr. HAWLEY. Mr. Speaker, I ask unanimous consent that I may have printed in the RECORD the speech of the Hon. JOHN Q. TILSON, the majority leader of the House of Representatives, made before the Connecticut State Chamber of Commerce at Hartford, Conn., on December 27, 1928.

The SPEAKER. The gentleman from Oregon asks unanimous consent to extend his remarks in the RECORD by printing therein an address delivered by the gentleman from Connecticut [Mr. TILSON]. Is there objection?

There was no objection.

Mr. HAWLEY. Mr. Speaker, under leave to extend my remarks in the RECORD I include the following speech of Hon. JOHN Q. TILSON, majority leader of the House of Representatives, before the Connecticut State Chamber of Commerce at Hartford, Conn., December 27, 1928:

TARIFF REVISION

Mr. TILSON. I have consented to come here and speak to the manufacturers and other business men of Connecticut on this occasion because I believe that thereby I may be able to help, and it is with this purpose alone in view that I have come to you.

You have seen something in the papers in regard to a probable revision of the tariff at an extra session of Congress to be held either immediately or some time after the coming of the new administration. In order that you may the better understand the present situation I think it would be well for me to spend a few minutes in giving you something of the background and genesis of the agitation for tariff revision. You will recall that during the last session of the present Congress, when the farm-relief question was very acute, a resolution was introduced by Senator MCMASTER, of South Dakota, in effect calling for an immediate drastic, downward revision of what the resolution characterized as the excessive tariff duties. After considerable discussion this resolution was passed in the Senate by something like a two-thirds vote. The Democrats voted for it almost, if not quite, solidly, as did a number of other Senators including those posing as special friends of the farmer.

The McMaster resolution having passed the Senate came over to the House. It was then only a few weeks before the dates set for the two national conventions, and it was perfectly obvious that no general revision of the tariff could be made prior to the conventions or in fact prior to the general election in November, and that if it were attempted it would simply mean a session of Congress largely

devoted to partisan politics lasting right up to the election. Our good Democratic friends at any rate and doubtless some of the others intended by the move, and very closely too, to embarrass the Republicans by precipitating a general tariff revision to be carried out simultaneously with the presidential campaign. A number of the Republican friends of the farmer in the House, some of them in a spirit of sheer desperation, were ready to grasp at any straw that gave the slightest hope of relieving the situation and so were inclined to vote to the resolution. Finally by the narrow margin of eight votes, as I remember, the resolution was in effect laid on the table, thus removing for the time being the menace of undertaking a revision of the tariff under instructions from both Houses of Congress to revise it downward.

I have cited thus briefly the history of the McMaster resolution in order to show that there was at that time some sentiment for tariff revision among the farmers of the West, or at any rate among those purporting to represent them, that was not altogether friendly to protection as a national policy. While the discussion was going on it became apparent that there were insistent demands for tariff revision coming from other parts of the country and from industries other than farming. The result was, and I am violating no pledge of secrecy in saying so now, that a sort of understanding grew up at that time that in case the immediate revision was deferred until a more opportune occasion, an early general revision, including both agriculture and other industries, should be undertaken. No pledge of this sort was, of course, made, for no one had the right or the authority to make such a pledge, but the feeling existed that this was what should be done and that feeling has grown.

Tariff revision was referred to in the Republican platform adopted at Kansas City where it says, "We reaffirm our belief in the protective tariff as a fundamental and essential principle of the economic life of this Nation. While certain provisions of the present law require revision in the light of changes in the world competitive situation since its enactment, the record of the United States since 1922 clearly shows that the fundamental protective principle of the law has been fully justified."

During the campaign the subject was referred to very often, so that it may well be said that the party that was successful at the polls won out with the widespread understanding that a general revision of the tariff should be undertaken. Fortunately, the party platform and the campaign waged upon the platform, coupled with the sweeping victory, all made it clear that what was really wanted was a revision along protective lines. It was often stated during the campaign that the tariff policy of the Republican Party was, and is, to give adequate, necessary protection to every legitimate industry.

In connection with tariff revision I should mention the subject of farm-relief legislation, for the two have been closely associated throughout the discussion of the farm-relief question, it being contended, and I believe rightly, that a proper adjustment of tariff duties on many farm products would be most helpful to that industry. During the campaign farm-relief legislation was being urged from many quarters and Mr. Hoover in his campaign utterances tentatively promised that if satisfactory farm-relief legislation were not enacted before he came into office, he would call Congress into extra session for the purpose of considering the general subject. I do not regard it as probable that satisfactory farm legislation will be enacted during the present session of Congress, and this largely because those who have been most insistent upon immediate farm relief have taken the attitude that they prefer to wait until Mr. Hoover actually becomes President, or as some have expressed it, they would prefer to take their chances of favorable legislation from Hoover rather than from Coolidge. Whether or not they are correct in this time may tell. I do know, however, that President Coolidge has been and is most desirious of seeing proper farm-relief legislation enacted, and I am sure would be glad to approve a sound bill; but as I have said, there is little likelihood of such legislation now. It is, therefore, in my judgment, most probable that Mr. Hoover will redeem the campaign pledge of calling Congress together in extra session to consider the entire question of farm relief, which it is conceded includes tariff revision.

Any satisfactory revision of our tariff laws must cover the entire field because many of the items are interrelated and the rates more or less interdependent. Therefore it would be impracticable to select a few items, or even a few of the schedules, and revise these without at the same time considering all the others so as to be sure that the rates are not thrown out of balance. The revision at the present time, however, need not be a long drawn out or so difficult a task as it has been in the past because the conditions are much more favorable than is usually the case.

Ordinarily, our tariff bills have been written alternately by the party favoring protection and the party professing adherence to a tariff for revenue only. Usually, when the protection party comes into power it is necessary to prepare a tariff bill along entirely different lines to supplant a law written on a tariff-for-revenue-only basis. The reverse of this is true when the tariff-for-revenue-only party comes into power. In the present instance a protective tariff law is on the statute books which, on the whole, has operated quite successfully. The main structure of the present law need not be changed, but it has been seven years since that law was enacted and conditions in many industries have changed, necessitating corresponding changes in the law. Our present task is simply to make the changes necessary to fit the changed conditions, leaving the basic structure of the law as it now stands.

In order to be ready for an early revision of the tariff in case an early extra session is called, the House Committee on Ways and Means of the present Congress is to begin on January 7 hearings preparatory to the early general revision of the tariff. These hearings do not bind the incoming President to call an extra session and it is possible, though I do not regard it as probable, that such hearings might demonstrate that no tariff revision is needed at this time. Believing, however, that the extra session will be called and that tariff revision will be had, I wish to say a few words as to what I think the attitude of the country should be toward such revision, and especially what the attitude of the manufacturers of this part of the country should be toward it.

I speak as a Republican and a protectionist. I could not speak otherwise and speak truly, so that any old-fashioned Democrats present whose views do not fully coincide with mine on this subject will have to make the necessary allowance, taking into the account my viewpoint, which has been frankly stated. I believe that as conditions now are in our own country and in foreign countries, an American system of protective-tariff duties is most necessary, or, at any rate, highly desirable. I believe that if the country were deprived of such a system we should be in for a period of depression the end of which no one could possibly foresee. What should be done, then, that a tariff bill may be written carrying rates that are fair, adequate, and yet only such as may be necessary for the proper protection of the countless number and variety of articles produced by our immensely varied industries? In the first place, I think that we should take the position that protection is a national policy and that it should apply with equal force to every industry in the country that can properly bring itself within the protective-tariff principle. We in New England should favor proper protection for farming, mining, and other industries, just as we ask and need it for purely manufacturing industries. A policy of protection must be based upon principles broad enough to cover the Nation or it can not stand.

Our manufacturers can help very materially in the preparation of tariff schedules that will stand the test of time and thorough investigation. All that is necessary is that Congress shall be furnished with the material facts so that the tariff rates proposed and adopted may be based upon such facts and upon as thorough knowledge as possible of the conditions surrounding each particular industry, both in this country and abroad. It is necessary that these facts be carefully prepared and that they be properly presented in a way to inspire the confidence of the committees of Congress in charge of the revision, the Members of both Houses of Congress, and the country generally. For, after all, the tariff law, like any other law, if it is to command respect, should be backed up by sound public opinion, and this public opinion in order to endure must be based securely upon the facts.

In presenting to Congress the needs of the several industries great care should be exercised that the case be neither overstated nor understated. If understated, and rates are based upon such understatement, then the protection given will not be sufficient and the result will be unsatisfactory, as was the case in a few instances in the revision of 1921–22. On the other hand, if the case be overstated, the close and critical scrutiny which is sure to be given every item by both friends and foes of the tariff, will surely reveal the exaggeration of the need for protection, and the error will recoil upon the heads of those giving the inaccurate information to the injury of the industry that has been thus misrepresented.

In the revision of 1921–22 I served as chairman of the subcommittee on both the metal schedule and the sundries schedule. Many manufacturers, importers, and others interested in the revision came before my subcommittee. I then strove to impress them all with the fact that what the committee needed was accurate information as to the actual condition of the particular industry and as thorough knowledge as possible of the facts upon which the claim of need for protection is predicated. Some of the manufacturers at that time underestimated their need and some of these have been penalized for their moderation. Some, a very few, I am glad to say, overstated their case as to the need for protection, and I am glad to say that they, in practically every instance of overstatement, were discovered in time to prevent erroneous action, but if some of these latter ones suffered on account of their exaggerated claims, they had no one to blame but themselves.

If the tariff is revised during the Seventy-first Congress, it will be the first time in many years that a revision has taken place without the presence of a Connecticut man on either the Ways and Means Committee of the House or the Finance Committee of the Senate, the two committees of Congress having charge of tariff matters. In the last revision I represented Connecticut on the committee in the House while Senator McLEAN represented our State in the Senate.

Four years ago I was promoted to the leadership of the House, and now Senator McLEAN, of his own volition, is leaving the Senate. I wish to assure you, however, that every possible effort will be made to

properly safeguard the interests of Connecticut in connection with the tariff bill. As floor leader of the House I am permitted, through conference and otherwise, to exercise my persuasive powers with the committees of the House as a sort of member ex officio of the committee. In view of the great interests of our State and of my familiarity with the subject, owing to the active part taken by me in the last revision, I shall avail myself of the privilege of conferring with the Ways and Means Committee as often as possible when matters directly affecting Connecticut are being considered. I shall, also, through my constant touch with the chairman of the Ways and Means Committee, try to keep track of the work of the committee as nearly as possible as though I were still a member of it.

I appeal to the manufacturers and other business men of Connecticut, who are particularly interested in the prospective revision of the tariff and are in position to do so, to give the kind of help that I have already indicated. In any event I appeal to you to consider the entire tariff question on a broad-minded, country-wide basis, remembering, as I stated at the outset, that this is a national policy, that we are but a part of a great country, bound together by strong common interests, and that our interests in the last analysis and in the long run are the same as the interests of all other parts of the country. I believe that New England, and especially Connecticut, will take this broad-minded, businesslike, statesmanlike view of the subject.

INTERIOR DEPARTMENT APPROPRIATION BILL

Mr. CRAMTON. Mr. Speaker, I ask unanimous consent to file before 12 o'clock to-night for printing under the rules the conference report upon the bill (H. R. 15089) making appropriations for the Interior Department.

The SPEAKER. The gentleman from Michigan asks unanimous consent that he may have until 12 o'clock to-night to file a conference report upon the Interior Department appropriation bill. Is there objection?

There was no objection.

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to an enrolled bill of the Senate of the following title:

S. 3127. An act to amend section 217, as amended, of the act entitled "An act to codify, revise, and amend the penal laws of the United States," approved March 4, 1909.

ADJOURNMENT

Mr. ANTHONY. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; and accordingly (at 4 o'clock and 18 minutes p. m.) the House adjourned until Monday, January 7, 1929, at 12 o'clock noon.

COMMITTEE HEARINGS

Mr. TILSON submitted the following tentative list of committee hearings scheduled for Monday, January 7, 1929, as reported to the floor leader by clerks of the several committees:

COMMITTEE ON APPROPRIATIONS

(10.30 a. m.)

Navy Department appropriation bill.
Independent offices appropriation bill.
District of Columbia appropriation bill.

COMMITTEE ON FOREIGN AFFAIRS

(10.30 a. m.)

Requesting the President to propose the calling of an international conference for the simplification of the calendar, or to accept on behalf of the United States, an invitation to participate in such a conference (H. J. Res. 334).

COMMITTEE ON NAVAL AFFAIRS

(10.30 a. m.)

To hear private bills.

COMMITTEE ON WAYS AND MEANS

(10 a. m. and 2 p. m.)

Tariff hearings as follows:

SCHEDULES

Chemicals, oils, and paints, January 7, 8, 9.
Earths, earthenware, and glassware, January 10, 11.
Metals and manufactures of, January 14, 15, 16.
Wood and manufactures of, January 17, 18.
Sugar, molasses, and manufactures of, January 21, 22.
Tobacco and manufactures of, January 23.
Agricultural products and provisions, January 24, 25, 28.
Spirits, wines, and other beverages, January 29.
Cotton manufactures, January 30, 31, February 1.
Flax, hemp, jute, and manufactures of, February 4, 5.
Wool and manufactures of, February 6, 7, 8.
Silk and silk goods, February 11, 12.
Papers and books, February 13, 14.
Sundries, February 15, 18, 19.
Free list, February 20, 21, 22.
Administrative and miscellaneous, February 25.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of Rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

725. A communication from the President of the United States, transmitting supplemental estimate of appropriation for the Federal Board for Vocational Education for the fiscal year ending June 30, 1930, amounting to $13,400 (H. Doc. No. 500); to the Committee on Appropriations and ordered to be printed.

726. A communication from the President of the United States, transmitting supplemental estimate of appropriation amounting to $7,130,000 for the fiscal year 1929 to enable the Porto Rican Hurricane Relief Commission to extend relief to the people of Porto Rico (H. Doc. No. 501); to the Committee on Appropriations and ordered to be printed.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of Rule XIII,

Mr. BOWMAN: Committee on the District of Columbia. S. 3936. An act to regulate the practice of the healing art to protect the public health in the District of Columbia; without amendment (Rept. No. 2009). Referred to the House Calendar.

Mr. FENN: Committee on the Census. H. R. 11725. A bill for the apportionment of Representatives in Congress; with amendment (Rept. No. 2010). Referred to the House Calendar.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of Rule XIII,

Mr. UNDERHILL: Committee on Claims. H. R. 3044. A bill for the relief of Leon Freidman; without amendment (Rept. No. 2011). Referred to the Committee of the Whole House.

Mr. UNDERHILL: Committee on Claims. H. R. 3047. A bill for the relief of J. Edward Burke; without amendment (Rept. No. 2012). Referred to the Committee of the Whole House.

Mr. UNDERHILL: Committee on Claims. H. R. 7173. A bill granting compensation to the daughters of James P. Gallivan; with amendment (Rept. No. 2013). Referred to the Committee of the Whole House.

Mr. GUYER: Committee on Claims. H. R. 11698. A bill conferring jurisdiction upon certain courts of the United States to hear and determine the claim by the owner of the steamship *W. I. Radcliffe* against the United States, and for other purposes; with amendment (Rept. No. 2014). Referred to the Committee of the Whole House.

Mr. GUYER: Committee on Claims. H. R. 11699. A bill conferring jurisdiction upon the United States Court for the Southern District of New York to hear and determine the claim of the owner of the French auxiliary bark *Quevilly* against the United States, and for other purposes; with amendment (Rept. No. 2015). Referred to the Committee of the Whole House.

Mr. HUDSPETH: Committee on Claims. H. R. 12502. A bill for the relief of John H. and Avie D. Mathison, parents of Charles W. Mathison, deseased; with amendment (Rept. No. 2016). Referred to the Committee of the Whole House.

Mr. UNDERHILL: Committee on Claims. H. R. 13521. A bill for the relief of Minnie A. Travers; with amendment (Rept. No. 2017). Referred to the Committee of the Whole House.

Mr. UNDERHILL: Committee on Claims. H. R. 13632. A bill for the relief of Ruth B. Lincoln; with amendment (Rept. No. 2018). Referred to the Committee of the Whole House.

Mr. UNDERHILL: Committee on Claims. H. R. 13888. A bill for the relief of Charles McCoombe; with amendment (Rept. No. 2019). Referred to the Committee of the Whole House.

Mr. BOX. Committee on Claims. S. 1364. An act for the relief of R. Wilson Selby; without amendment (Rept. No. 2020). Referred to the Committee of the Whole House.

Mr. BOX. Committee on Claims. S. 1500. An act for the relief of James J. Welsh, Edward C. F. Webb, Francis A. Meyer, Mary S. Bennett, William McMullin, jr., Margaret McMullin, R. B. Carpenter, McCoy Yearsley, Edward Yearsley, George H. Bennett, jr., Stewart L. Beck, William P. McConnell, Elizabeth J. Morrow, William B. Jester, Josephine A. Haggan, James H. S. Gam, Herbert Nicoll, Shallcross Bros., E. C. Buckson, Wilbert Rawley, R. Rickards, jr., Dredging Co.; without amendment (Rept. No. 2021). Referred to the Committee of the Whole House.

Mr. UNDERHILL: Committee on Claims. S. 1547. An act for the relief of Johns-Manville Corporation; without amendment (Rept. No. 2022). Referred to the Committee of the Whole House.

Mr. STEELE: Committee on Claims. S. 2989. An act for the relief of John B. Moss; without amendment (Rept. No. 2023). Referred to the Committee of the Whole House.

Mr. SCHAFER: Committee on Claims. S. 3741. An act for the relief of S. L. Roberts; without amendment (Rept. No. 2024). Referred to the Committee of the Whole House.

CHANGE OF REFERENCE

Under clause 2 of Rule XXII, the Committee on Invalid Pensions was discharged from the consideration of the bill (H. R. 15750) granting a pension to Clara E. Moor, and the same was referred to the Committee on Pensions.

PUBLIC BILLS AND RESOLUTIONS

Under clause 3 of Rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ALLEN: A bill (H. R. 15916) to provide for the construction of a new bridge across the south branch of the Mississippi River from Sixteenth Street, Moline, Ill., to the east end of the island occupied by the Rock Island Arsenal; to the Committee on Interstate and Foreign Commerce.

By Mr. ARNOLD: A bill (H. R. 15917) to extend the times for commencing and completing the construction of a bridge across the Wabash River at Mount Carmel, Ill.; to the Committee on Interstate and Foreign Commerce.

By Mr. DOUGLAS of Arizona: A bill (H. R. 15918) to amend the act entitled "An act to authorize credit upon the construction charges of certain water-right applicants and purchasers on the Yuma and Yuma Mesa auxiliary projects, and for other purposes"; to the Committee on Irrigation and Reclamation.

Also, a bill (H. R. 15919) to authorize the issuance of patent for lands containing copper, lead, zinc, or silver and their associated minerals, and for other purposes; to the Committee on the Public Lands.

By Mr. CRAIL: A bill (H. R. 15920) to amend the act of May 24, 1928, entitled "An act making eligible for retirement, under certain conditions, officers and former officers of the Army, Navy, and Marine Corps of the United States, other than officers of the Regular Army, Navy, or Marine Corps, who incurred physical disability in line of duty while in the service of the United States during the World War"; to the Committee on World War Veterans' Legislation.

By Mr. LUCE: A bill (H. R. 15921) to authorize an appropriation to provide additional hospital, domiciliary, and outpatient dispensary facilities for persons entitled to hospitalization under the World War veterans' act, 1924, as amended, and for other purposes; to the Committee on World War Veterans' Legislation.

By Mr. CROWTHER: A bill (H. R. 15922) to provide for not less than 50 clear channels of radio communication; to the Committee on the Merchant Marine and Fisheries.

By Mr. MORIN: A bill (H. R. 15923) to authorize an appropriation for the construction of approaches, surroundings, and adjacent roadways to the Tomb of the Unknown Soldier, in the Arlington National Cemetery, Va.; to the Committee on Military Affairs.

By Mr. JOHNSON of South Dakota: A bill (H. R. 15924) to establish a department of veterans' affairs; to the Committee on Expenditures in the Executive Departments.

By Mr. SUTHERLAND: A bill (H. R. 15925) to facilitate work of the Department of Agriculture in the Territory of Alaska; to the Committee on Agriculture.

By Mr. CRAIL: A bill (H. R. 15926) to amend section 13 of the act of February 25, 1920, entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain"; to the Committee on the Public Lands.

By Mr. CELLER: Joint resolution (H. J. Res. 371) establishing a peace college; to the Committee on Foreign Affairs.

By Mr. GARNER of Texas: Joint resolution (H. J. Res. 372) increasing the authorization for appropriations for the International Water Commission, United States and Mexico; to the Committee on Foreign Affairs.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of Rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. BECK of Wisconsin: A bill (H. R. 15927) granting a pension to Inez L. Hoxsie; to the Committee on Invalid Pensions.

By Mr. BROWNING: A bill (H. R. 15928) granting a pension to Edward Eason; to the Committee on Pensions.

By Mr. BUCKBEE: A bill (H. R. 15929) granting a pension to Earnest J. Wolter; to the Committee on Pensions.

By Mr. CANNON: A bill (H. R. 15930) granting a pension to Sarah Coleman; to the Committee on Invalid Pensions.

By Mr. DAVENPORT: A bill (H. R. 15931) granting an increase of pension to Elizabeth Bowman; to the Committee on Invalid Pensions.

By Mr. DOUGLAS of Arizona: A bill (H. R. 15932) for the relief of Raymond W. Still; to the Committee on the Post Office and Post Roads.

By Mr. ENGLAND: A bill (H. R. 15933) granting an increase of pension to Florence S. Smith; to the Committee on Invalid Pensions.

By Mr. FENN: A bill (H. R. 15934) granting an increase of pension to Emily L. Ingram; to the Committee on Pensions.

By Mr. W. T. FITZGERALD: A bill (H. R. 15935) granting a pension to Irene Goetz; to the Committee on Invalid Pensions.

Also, a bill (H. R. 15936) granting a pension to Robert Valentine; to the Committee on Invalid Pensions.

Also, a bill (H. R. 15937) granting a pension to Pauline E. Geiser; to the Committee on Pensions.

Also, a bill (H. R. 15938) granting a pension to Emeline Wheelock; to the Committee on Invalid Pensions.

Also, a bill (H. R. 15939) granting a pension to Virgil H. Effinger; to the Committee on Pensions.

By Mr. FREE: A bill (H. R. 15940) for the relief of Stewart M. Crosgrove; to the Committee on Military Affairs.

By Mr. GUYER: A bill (H. R. 19541) granting an increase of pension to Virginia F. Huddleston; to the Committee on Invalid Pensions.

Also, a bill (H. R. 15942) for the relief of the University of Kansas; to the Committee on Claims.

Also, a bill (H. R. 15943) granting a pension to John Davis; to the Committee on Pensions.

Also, a bill (H. R. 15944) granting an increase of pension to Louesa M. Cochran; to the Committee on Invalid Pensions.

Also, a bill (H. R. 15945) granting a pension to Kate Bartholomew; to the Committee on Invalid Pensions.

Also, a bill (H. R. 15946) granting a pension to Frances Lutton; to the Committee on Invalid Pensions.

Also, a bill (H. R. 15947) granting a pension to Effie R. Brooks; to the Committee on Invalid Pensions.

By Mr. GOLDSBOROUGH: A bill (H. R. 15948) to provide for an examination and survey for a waterway across Kent Island, Queen Annes County, Md.; to the Committee on Rivers and Harbors.

Also, a bill (H. R. 15949) to provide for the examination and survey of Walnut Harbor, Talbot County, Md.; to the Committee on Rivers and Harbors.

Also, a bill (H. R. 15950) to provide for the examination and survey of Knapps Narrows, Talbot County, Md.; to the Committee on Rivers and Harbors.

By Mr. JOHNSON of Washington: A bill (H. R. 15951) granting an increase of pension to Eva R. Hunt; to the Committee on Invalid Pensions.

By Mr. JONES: A bill (H. R. 15952) relating to the eligibility of Jackson A. Findley for appointment as a cadet to the United States Military Academy; to the Committee on Military Affairs.

By Mrs. KAHN: A bill (H. R. 15953) to renew and extend certain letters patent to Rosa Schoenholz; to the Committee on Patents.

By Mr. KING: A bill (H. R. 15954) granting a pension to Mrs. James Newton Ramsey; to the Committee on Pensions.

By Mrs. LANGLEY: A bill (H. R. 15955) granting a pension to Clement Shepherd; to the Committee on Invalid Pensions.

Also, a bill (H. R. 15956) granting a pension to Edward Chaney; to the Committee on Invalid Pensions.

Also, a bill (H. R. 15957) granting a pension to James Tucker; to the Committee on Invalid Pensions.

Also, a bill (H. R. 15958) granting a pension to Arthur McDaniel; to the Committee on Invalid Pensions.

Also, a bill (H. R. 15959) granting a pension to Lizzie Gullett; to the Committee on Pensions.

By Mr. MAJOR of Missouri: A bill (H. R. 15960) granting a pension to Eliza Ellen Scott; to the Committee on Invalid Pensions.

By Mr. MURPHY: A bill (H. R. 15961) granting an increase of pension to Avarilla C. Culler; to the Committee on Invalid Pensions.

By Mr. NELSON of Maine: A bill (H. R. 15962) granting an increase of pension to Cornelia Hunton; to the Committee on Invalid Pensions.

By Mr. ROBINSON of Iowa: A bill (H. R. 15963) granting an increase of pension to Mary J. Doyle; to the Committee on Invalid Pensions.

By Mr. ROWBOTTOM: A bill (H. R. 15964) granting an increase of pension to Martha J. Roberts; to the Committee on Invalid Pensions.

By Mr. SWANK: A bill (H. R. 15965) granting a pension to Leo R. Snow; to the Committee on Pensions.

By Mr. VESTAL: A bill (H. R. 15966) granting an increase of pension to John G. Heck; to the Committee on Pensions.

By Mr. ZIHLMAN: A bill (H. R. 15967) granting an increase of pension to Ann M. Kisner; to the Committee on Invalid Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

8156. By Mr. CHALMERS: Petition of citizens of the State of Ohio, desiring to have our governmental money system controlled by the Government only; to the Committee on Banking and Currency.

8157. By Mr. GARBER: Petition of Manufacturers' Conference on Prison Industries, urging passage of House bill 7729, the convict labor bill; to the Committee on Labor.

8158. Also, petition of the American Association Creamery Butter Manufacturers, the American Dairy Federation, and the National Dairy Union, in support of the Haugen oleomargarine law amendment (H. R. 10958); to the Committee on Agriculture.

8159. Also, petition of the National Lumber Manufacturers Association, requesting that the scope of any legislative enactment which will, under suitable safeguards, permit control of production in the coal and oil industries, be extended to include also forest products; to the Committee on Agriculture.

8160. By Mr. O'CONNELL: Petition of the Merchants Association of New York, favoring additional Federal judges for the city of New York; to the Committee on the Judiciary.

8161. Also, petition of the Chamber of Commerce of the State of New York, favoring the widening of the channel in the vicinity of the quarantine anchorage of Stapleton, Staten Island, N. Y.; to the Committee on Rivers and Harbors.

8162. By Mr. SWICK: Petition of Victory District, No. 14, Loyal Orange Lodge, Lawrence County, Pa., urging the extension of quota restrictions to immigration from Mexico and Canada, and more stringent enforcement of existing immigration laws; to the Committee on Immigration and Naturalization.

SENATE

MONDAY, *January 7, 1929*

The Chaplain, Rev. ZeBarney T. Phillips, D. D., offered the following prayer:

O Shepherd of Israel, who dost neither slumber nor sleep, we are the people of Thy pasture and the sheep of Thy hand. Make us to love Thy voice and answer to the name by which Thou callest us; so shall none be able to pluck us out of Thy hand. Beside the still waters, through pastures green, and in the valley where deep shadows lie, be Thou our strength and shield; and do Thou shepherd us beyond the plains of peril to the eternal fold where we may lie down in peace and take our rest, for it is Thou only that makest us dwell in safety. Grant this for the sake of Him who is the Lamb of God, Jesus Christ our Lord. Amen.

The Chief Clerk proceeded to read the Journal of the proceedings of Saturday last, when, on request of Mr. CURTIS and by unanimous consent, the further reading was dispensed with and the Journal was approved.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Haltigan, one of its clerks, announced that the Speaker had affixed his signature to the enrolled bill (S. 3127) to amend section 217, as amended, of the act entitled "An act to codify, revise, and amend the penal laws of the United States, approved March 4, 1909," and it was signed by the Vice President.

CALL OF THE ROLL

Mr. CURTIS. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Ashurst	Brookhart	Couzens	Fess
Barkley	Broussard	Curtis	Fletcher
Bayard	Bruce	Dale	Frazier
Bingham	Burton	Deneen	George
Blaine	Capper	Dill	Gerry
Blease	Caraway	Edge	Gillett
Borah	Copeland	Edwards	Glass
Glenn	McKellar	Ransdell	Swanson
Goff	McLean	Reed, Mo.	Thomas, Idaho
Gould	McMaster	Reed, Pa.	Thomas, Okla.
Greene	McNary	Robinson, Ark.	Trammell
Hale	Mayfield	Robinson, Ind.	Tydings
Harris	Metcalf	Sackett	Vandenberg
Hastings	Moses	Schall	Wagner
Hayden	Neely	Sheppard	Walsh, Mass.
Heflin	Norbeck	Shipstead	Walsh, Mont.
Johnson	Norris	Shortridge	Warren
Jones	Nye	Simmons	Waterman
Kendrick	Oddie	Smoot	Watson
Keyes	Overman	Steck	Wheeler
King	Phipps	Steiwer	
La Follette	Pine	Stephens	

Mr. HEFLIN. My colleague the junior Senator from Alabama [Mr. BLACK] is absent on account of illness. I ask that this announcement may stand for the day.

Mr. MCKELLAR. I desire to announce that my colleague the junior Senator from Tennessee [Mr. TYSON] is unavoidably detained from the Senate on account of a death in his family. I ask that this announcement may stand for the day.

Mr. NORRIS. My colleague the junior Senator from Nebraska [Mr. HOWELL] is detained from the Senate by illness. I will let this announcement stand for the day.

The PRESIDING OFFICER (Mr. ODDIE in the chair). Eighty-six Senators having answered to their names, a quorum is present.

CREDENTIALS

The PRESIDING OFFICER (Mr. ODDIE in the chair) laid before the Senate the credentials of FREDERICK HALE, chosen a Senator from the State of Maine for the term commencing March 4, 1929, which were read and ordered to be placed on file, as follows:

STATE OF MAINE.

To all who shall see these presents, greeting:

Know ye that FREDERICK HALE, of Portland, in the county of Cumberland, on the 10th day of September, A. D. 1928, was chosen by the electors of this State a United States Senator to represent the State of Maine in the United States Senate for the term of six years beginning on the 4th day of March, 1929.

In testimony whereof I have caused the seal of State to be hereunto affixed.

Given under my hand at Augusta the 15th day of November, A. D. 1928, and in the one hundred and fifty-third year of the independence of the United States of America.

By the governor:

RALPH O. BREWSTER.

[SEAL.] EDGAR C. SMITH,
Secretary of State.

The PRESIDING OFFICER laid before the Senate the credentials of PARK TRAMMELL, chosen a Senator from the State of Florida for the term commencing March 4, 1929, which were read and ordered to be placed on file, as follows:

To the PRESIDENT OF THE SENATE OF THE UNITED STATES:

This is to certify that on the 6th day of November, 1928, PARK TRAMMELL was duly chosen by the qualified electors of the State of Florida a Senator from said State to represent said State in the Senate of the United States for the term of six years beginning on the 4th day of March, 1929.

Witness: His excellency our governor, John W. Martin, and our seal hereto affixed at Tallahasssee, this the 20th day of December, A. D. 1928.

JOHN W. MARTIN, *Governor.*

By the governor, attest:

[SEAL.] H. CLAY CRAWFORD,
Secretary of State.

Mr. METCALF presented the credentials of FELIX HEBERT, chosen a Senator from the State of Rhode Island for the term commencing March 4, 1929, which were read and ordered to be placed on file, as follows:

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS.

To the PRESIDENT OF THE SENATE OF THE UNITED STATES:

This is to certify that on the 6th day of November, 1928, FELIX HEBERT was duly chosen by the qualified electors of the State of Rhode Island and Providence Plantations a Senator from said State to represent said State in the Senate of the United States for the term of six years, beginning on the 4th day of March, 1929.

Witness: His excellency our governor, Norman S. Case, and our seal hereto affixed at Providence this 21st day of December, A. D. 1928.

By the governor:

NORMAN S. CASE, *Governor.*

[SEAL.] ERNEST L. SPRAGUE,
Secretary of State.

AGRICULTURAL INSURANCE (S. DOC. NO. 190)

The PRESIDING OFFICER laid before the Senate a communication from the Secretary of Agriculture, reporting, in re-